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**The Relationship Between Humanitarian International Non-governmental Organisations and States in Periods of Civil War**  
**Case Study of Médecins Sans Frontières-Holland and the Government of Sri Lanka**

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King's College London

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**The Relationship Between  
Humanitarian International Non-governmental Organisations  
and States  
in Periods of Civil War:  
Case Study of Médecins Sans Frontières-Holland  
and the Government of Sri Lanka**

Thesis submitted by  
Andrew J. Cunningham  
to  
The Department of War Studies  
In fulfilment of the requirements for the degree of  
Doctor of Philosophy  
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## **Acknowledgments**

First, I wish to acknowledge all of the input and support I received from colleagues at MSF-Holland and to thank the organisation for allowing me complete and unhindered access to its Sri Lanka archives. Needless to say, my interpretation of MSF's work in Sri Lanka is my own.

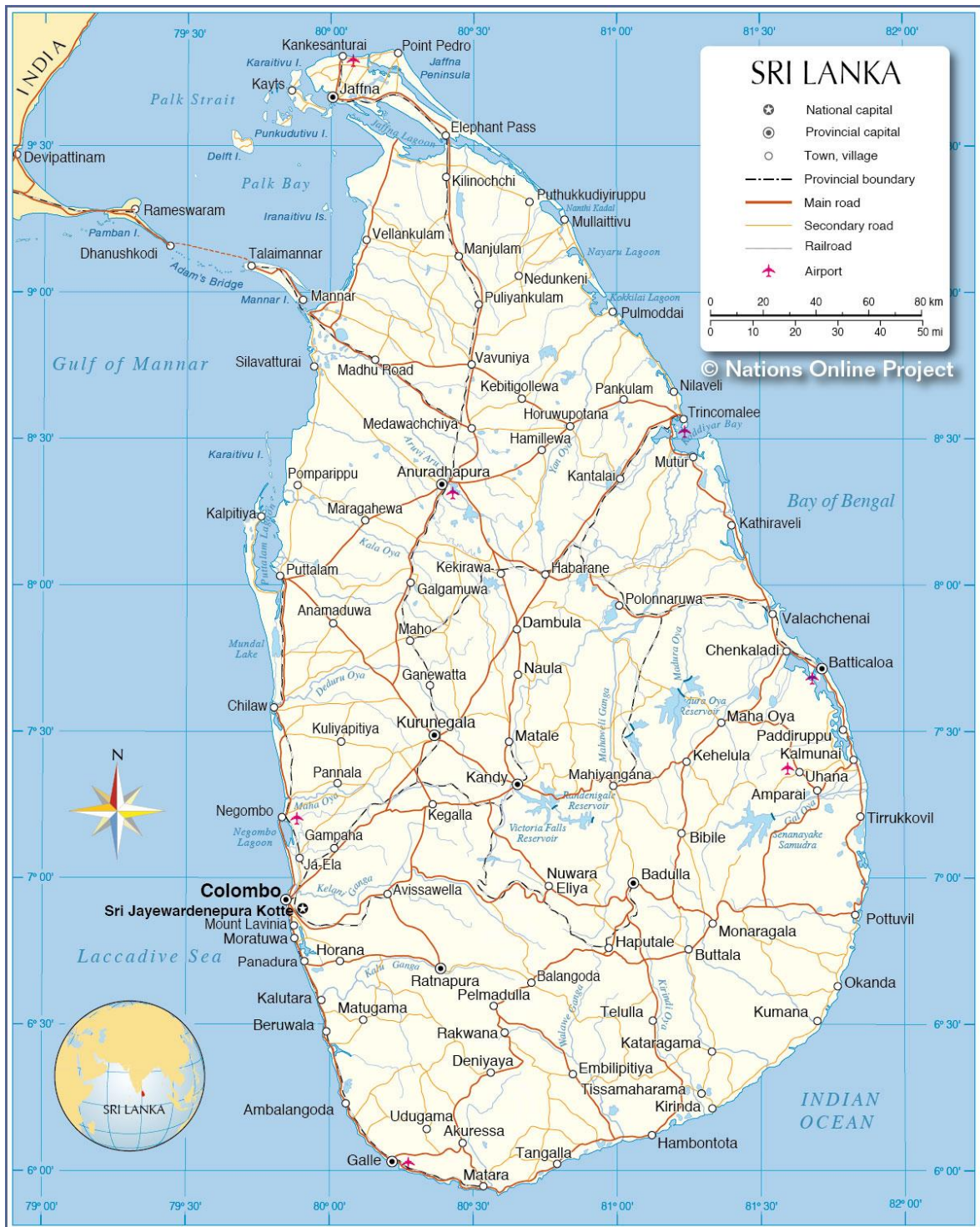
Much appreciation of course goes to my thesis supervisor Prof Mats Berdal and my secondary advisor Dr Oisin Tansey. Thank you both for all of your kind comments, constructive input, and encouragement.

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Last, but certainly not least, a huge thank you to my wife, Clea Kahn, for her patience, understanding, and support.

## Map of Sri Lanka



## **Abstract**

This research examines the relationship between a humanitarian international non-governmental organisation (INGO) and a state against the background of civil war. This relationship is established as two sets of norms in tension: The moral as represented and made operational by humanitarian INGOs and the political as articulated and practised by states, mediated through the discourse of identity. Specifically the study investigates the constructed relationship between the humanitarian INGO Médecins Sans Frontières-Holland (MSF-H) and the Government of Sri Lanka (GoSL) during two periods of the Sri Lankan civil war (2006 and 2008-2009). A negotiation structure is proposed where an external actor—a humanitarian INGO—attempts to operate within the internal environment of a state. For a state, civil war is a ‘state of exception’, where a government’s prerogative to act outside ‘normal’ legal and moral boundaries may be taken up and where international actors are securitised. For a humanitarian organisation a civil war is defined as a humanitarian crisis which must be responded to using humanitarian principles in a non-political manner. This case study relationship is viewed from both MSF-Holland’s and the GoSL’s perspectives. On the side of the GoSL the study describes and analyses the government’s decision-making when faced by international criticism, a humanitarian crisis, and international organisations attempting to work on its territory. The background for the GoSL’s actions is extensively explored. MSF-Holland’s response to the thinking and actions by the GoSL is also closely examined, as is its internal discussions concerning its role in the context as a humanitarian actor. A discourse analysis methodology is used to analyse the primary source material. It was found that when securitised MSF-H had various options in responding: Accommodation to the demands of the GoSL; withdrawal from the country; counter-attacking the government; or concealment—hiding itself from attention. Rejecting these MSF-H chose desecuritisation. In the 2006 period engagement between the actors was possible albeit difficult; the securitisation process was manageable through desecuritisation. However, in the 2008-2009 period securitisation prohibited action and speech, and desecuritisation was not effective. The thesis proposes a theoretical framework—a negotiation structure, within which to understand these interactions, based on the case study findings. The conclusion points to further research needs and discusses the usefulness of the proposed negotiation structure to other contexts.

## Preface

My interest in the theme of this research, the state–humanitarian international non-governmental organisation (INGO) relationship against the backdrop of civil conflict, was derived from my nearly 20 years of work with humanitarian organisations, including 14 years full-time work with Médecins Sans Frontières (MSF). Humanitarian organisations are faced with many challenges working in the midst of conflict, and the often difficult relationship with states has become one of the dominant themes over the last decade or so. In my MSF work, in the field and in headquarters, I dealt with many contexts where the relationship with states was tense and difficult, such as Sudan, Russia, Turkmenistan, Pakistan, Ethiopia, Eritrea, and China, amongst others. These experiences led to the development of a research theme within the organisation which began a process of reflection on this evolving relationship. This project included the co-editing of an MSF-sponsored special edition of the journal *Disasters* on the topic of state sovereignty and humanitarian action.<sup>1</sup> However, I was aware that much more work needed to be done on the topic and I decided to dedicate my PhD thesis research to it, focusing on the humanitarian organisation I knew best, MSF. I was able to leverage my MSF connection to obtain complete and unhindered access to the MSF-Holland Sri Lanka archives which greatly enhanced the empirical depth to my research. The decision was made to focus on the Sri Lankan context partly because I had had no prior engagement with MSF's work in that conflict (as I had with the other countries considered), and therefore could come to that humanitarian context with a relatively fresh and objective eye.

This study should be seen as one component of a larger research project which aims to develop a more sophisticated and nuanced understanding of the relationship between states and INGOs in times of civil conflict. Although the often tense relationship with states is seen by INGOs as one of the dominant challenges facing humanitarian action, this thematic has lacked in-depth empirical research which has resulted in a lack of theoretical grounding for action, ill-informed policy formulation, and often unproductive interactions. This study initially aimed to research the state's perspective directly through conducting field research in Sri Lanka. The goal was to interview government and civil society actors to better understand the thinking behind the government's actions vis-à-vis INGOs, MSF in particular. Unfortunately, the necessary permissions were not granted by the Government of Sri Lanka (GoSL) to conduct the field research. In addition, access to GoSL officials was not

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<sup>1</sup> Clea Kahn and Andrew Cunningham (eds.), 'Special Edition: State Sovereignty and Humanitarian Action', *Disasters*, 37, Supplement 2 (2013).

forthcoming, severely limiting the potential value of the field research even if it had been possible to conduct it. This was in and of itself an interesting finding which reinforced the importance of the central problematic, and in many ways the lack of direct access to GoSL authorities put me as a researcher into the shoes of humanitarian actors who often only have a government's discourse to go by in interpreting the rationale for government decision-making. Discourse, accessible from a distance, then became the lens through which the Sri Lankan government's side of the story was established. Rather than weakening the research project, in the end it was methodologically strengthened, as the discursive environment within which both actors worked is rich in explanatory potential and forms a firm basis for theory development. As this thesis's research process mirrors that of the actors themselves, hopefully the research findings will be useful in practice as well. Sri Lanka was again the land of serendipity.<sup>2</sup>

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<sup>2</sup> Horace Walpole coined the term serendipity in 1754 as an allusion to the old name for Sri Lanka, 'Serendip'.

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## **Introduction**

### **Humanitarian International Non-governmental Organisations**

**and**

**States**

*He who knows only his own side of the case, knows little of that. His reasons may be good, and no one may have been able to refute them. But if he is equally unable to refute the reasons on the opposite side; if he does not so much as know what they are, he has no ground for preferring either opinion. The rational position for him would be suspension of judgment, and unless he contents himself with that, he is either led by authority, or adopts, like the generality of the world, the side to which he feels most inclination.*

John Stuart Mill, *On Liberty*<sup>1</sup>

#### **I. Humanitarian International Non-governmental Organisations and States**

Following Mill's warning, there are two sides to a story and proponents of each should strive to understand the other's perspective. The story told in this thesis relates to the interaction between states and humanitarian international non-governmental organisations (INGOs) in times of civil conflict. The question to be addressed is how these two actors understand each other: What process do the two actors use to form and develop their relationship and within what type of structure? The response to this question demands both deep empirical study and the development of a theoretical framework, for as will be seen there is a gap in the literature concerning how to theoretically understand the interaction between INGOs and states in times of civil war. The first step in this process of understanding is to appreciate the starting perspectives and backgrounds of the two actors involved.

Humanitarian international non-governmental organisations provide assistance to populations living in the midst of man-made crises, natural disasters, or armed conflicts.<sup>2</sup> The internal narrative of humanitarian actors is that they are moral agents performing good works for people in dire need.

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<sup>1</sup> John Stuart Mill, *The Basic Writings of John Stuart Mill: On Liberty, the Subjection of Women and Utilitarianism* (New York: The Modern Library, 2002), p. 38.

<sup>2</sup> The standard designation of such organisations is 'international non-governmental organisations', or INGOs. The designation 'international' is used to differentiate international from national NGOs—NNGOs. International NGOs, though, come in many forms; this study focusses on 'humanitarian' INGOs. The acronym INGOs will be used to refer to all types of INGOs; the modifier 'humanitarian' will indicate when humanitarian INGOs are being discussed.

Their goal is to save lives and alleviate suffering. Humanitarian action is believed to inhabit a moral universe which should by definition be sheltered from the harsh realities of the political sphere. This identity is the basis for action and provides a functional framework by which humanitarians desire their action to be understood. Humanitarian workers, however, do not implement their activities in isolation and operate within a complex global political environment. Debates in the humanitarian sector have increasingly called into question the viability of the ‘humanitarian project’ as it is currently understood.<sup>3</sup> The sanctity of humanitarian principles—humanity, independence, neutrality, and impartiality, has been questioned; the relationship with institutional donors is often politically and ethically problematic; the Western identity of the majority of the large international agencies is often seen as a liability; and the contexts within which humanitarian actors work are perceived to be increasingly more dangerous. The relevancy of humanitarian action in relation to longer-term development aid projects is often questioned, and multi-mandate organisations—those that implement both humanitarian and development aid, are seen by some to be muddying the pure waters of humanitarianism.<sup>4</sup> And finally, serious concerns have been expressed over aid ‘politicisation’—when states use aid and aid actors for political purposes, and aid ‘criminalisation’—when aid provision is made a criminal act if assistance is thought to support proscribed organisations.

Another prevalent theme, and the theme of this research, concerns the relationship between humanitarian INGOs and states receiving humanitarian aid in times of civil conflict. On a practical level, the narrative as told by humanitarian actors is that states are ‘reasserting their sovereignty’ and ‘pushing back’ against INGOs. In the humanitarian sector this is often referred to as the ‘strong states’ thematic.<sup>5</sup> Humanitarian agencies perceive a world in which states—both donor and aid

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<sup>3</sup> The literature is vast; for more recent debates see for example: Vivien Collingwood and Louis Logister, ‘State of the Art: Addressing the INGO ‘Legitimacy Deficit’’, *Political Studies Review*, 3 (2005), pp. 175-192; Benedict Dempsey and Amelia Kyazze, ‘At a Crossroads: Humanitarianism for the Next Decade’ (London: Save the Children, 2010); The Lancet, ‘Growth of Aid and the Decline of Humanitarianism’, 375:9711 (2010), p. 253; Jennifer Leaning, ‘The Dilemma of Neutrality’, *Prehospital and Disaster Medicine*, 22:5 (2007), pp. 418-421; Joanna Macrae (ed.), ‘The New Humanitarians: A Review of Trends in Global Humanitarian Action’, *HPG Report*, 11 (London: Overseas Development Institute, 2002); Marc-Antoine Perouse de Montclos, ‘Neutrality and Humanitarian NGOs as Political Actors: A Review’, Annual Meeting of the International Studies Association, San Diego, CA (2006); and Michael Pugh, ‘Peacekeeping and Critical Theory’, *International Peacekeeping*, 11:1 (2004), pp. 39-58 (see particularly pp. 48-50).

<sup>4</sup> Whereas humanitarian organisations work in times of crisis, development organisations work in more stable environments to meet longer-term development goals. Such organisations will typically have a closer relationship with host governments than humanitarian organisations which try to distance themselves from the parties in a conflict. Some organisations, however, combine both mandates and are often criticised for the perceived incompatibility of the two mandates. See, for example, an MSF critique: Michiel Hofman, ‘Opinion and Debate: Less is More—The Case for a Purely Humanitarian Response in Emergencies’ (undated), at: <http://www.msf.org.uk/article/opinion-and-debate-less-more-case-purely-humanitarian-response-emergencies> [last accessed 26 August 2015].

<sup>5</sup> Clea Kahn and Andrew Cunningham, ‘Introduction to the Issue of State Sovereignty and Humanitarian Action’, *Disasters*, 37, supplement 2 (2013), pp. S139-S150.

recipient states, manipulate humanitarian actors for cynical political objectives, deliberately interfere with the 'right' and duty of humanitarian agencies to provide humanitarian assistance, and impose undue bureaucratic constraints on INGOs for economic gain or simply out of spite. States, naturally, have their own narratives. States inhabit a world of other states—an international political system, and thus have a formal and legal understanding of sovereignty upon which they base their rights, responsibilities, and duties as political actors. Actors external to the state, its territory, and population are seen as potential threats. A countervailing narrative of interference by external actors pervades. If INGOs believe they inhabit a moral space, states inhabit a fundamentally political space, one where INGOs are seen as political actors and humanitarian assistance is considered to be a fundamentally political act. A view has emerged that states, particularly in the developing world, have begun reinforcing the sanctity of the notion of sovereignty in relation to emerging external 'threats', such as the work of the International Criminal Court,<sup>6</sup> an increasing number of military humanitarian interventions,<sup>7</sup> and the growing recognition of the concept of the 'Responsibility to Protect' (R2P).<sup>8</sup> Over the last decades there have also been tensions between the perceived domination of Western ideology, particularly concerning human rights norms, in the global debate on the form and function of the international order, and a concomitant push-back by many non-Western states, found most notably in the 'Asian values' discourse.<sup>9</sup>

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<sup>6</sup> See, for example: Mwangi S. Kimenyi, 'Can the International Criminal Court Play Fair in Africa?', Africa in Focus, Brookings Institution (17 October 2013), <http://www.brookings.edu/blogs/africa-in-focus/posts/2013/10/17-africa-international-criminal-court-kimenyi> [last accessed 20 March 2015].

<sup>7</sup> See, for example: Ryan Goodman, 'Humanitarian Intervention and Pretexts for War', *The American Journal of International Law*, 100:107 (2006), pp. 107-141; Christopher Greenwood, 'Is There a Right of Humanitarian Intervention?', *The World Today*, 49:2 (1993), pp. 34-40; Gene M. Lyons and Michael Mastanduno, *Beyond Westphalia? State Sovereignty and International Intervention* (Baltimore: Johns Hopkins University Press, 1995); Anne Ryniker, 'The ICRC's Position on Humanitarian Intervention', *International Review of the Red Cross*, 83:842 (2001), pp. 527-532; Hugo Slim, 'Military Intervention to Protect Human Rights: The Humanitarian Agency Perspective', International Council on Human Rights Meeting on Humanitarian Intervention: Responses and Dilemmas for Human Rights Organisations, Geneva, 2001; and Koji Watanabe, *Humanitarian Intervention: The Evolving Asian Debate* (Tokyo: Japan Center for International Exchange, 2003).

<sup>8</sup> See, for example: Philip Cunliffe, 'Sovereignty and the Politics of Responsibility', in Christopher Bickerton, Philip Cunliffe and Alexander Gourevitch (eds.), *Politics Without Sovereignty: A Critique of Contemporary International Relations* (London: University College London Press, 2007); Robert H. Jackson, *The Global Covenant: Human Conduct in a World of States* (Oxford: Oxford University Press, 2000); Andy Jones, 'NGOs and the Retreat of the State?', *E-International Relations* (29 February 2008), at: <http://www.e-ir.info/2008/02/29/ngos-and-the-retreat-of-the-state/> [last accessed 20 March 2015]; Christoph Schreur, 'The Waning of the Sovereign State: Towards a New Paradigm for International Law?', *European Journal of International Law*, 4 (1993), pp. 447-471; and Georg Sorensen, *Changes in Statehood: The Transformation of International Relations* (Basingstoke: Palgrave Macmillan, 2001).

<sup>9</sup> See, for example: Amitav Acharya, *Whose Ideas Matter? Agency and Power in Asian Regionalism* (Ithaca, NY: Cornell University Press, 2009); Alfred M. Boll, 'The Asian Values Debate and its Relevance to International Humanitarian Law', *International Review of the Red Cross*, 83:841 (2001), pp. 45-58; and Gerd Langguth, 'Asian Values Revisited', *Asia Europe Journal*, 1:1 (2003).

The context within which humanitarian INGOs and states interact and build their relationships is therefore complex and strained. The fact of the relationship cannot be disputed, but what form the relationship should take is essentially contested, as international humanitarian actors and states differ fundamentally on the parameters of the relationship. Consequently the relationship is ever evolving and difficult to conceptualise. The task at hand is to develop a theoretical framework which can describe and explain how the relationship actually functions in practice. Although the relationship is essentially contested, it is argued that there are still rules and norms which guide how it is constructed over time. Following Mill, it is hoped that such a better understanding may assist humanitarian INGOs in improving their relationships with states, not for their own sakes, but to better enable populations suffering in the midst of humanitarian crises to access humanitarian assistance. The way to do this is through a careful examination of how humanitarian INGOs and states interact in practice, constructing a theoretical framework from the analysis of empirical evidence.

Although a review of the literature does not provide sufficient insight to adequately conceptualise this relationship, a number of illuminating themes related to the interaction between humanitarian actors and states are elaborated upon in the predominately practitioner-oriented literature.<sup>10</sup> A common strand relates to complaints by INGOs about the interference of states in their work,<sup>11</sup> and critiques of the humanitarian system as a whole, including how states fit into the system.<sup>12</sup> Case studies of natural disaster responses by affected states focusing on bureaucratic and legal mechanisms,<sup>13</sup> and the desirability of building resilience with people, communities, and states as a way to mitigate the effects of future disasters,<sup>14</sup> form another strand. The ‘clash’ between humanitarian action and sovereignty and its effects on the security of humanitarian actors;<sup>15</sup> how aid is politically contextualised in the global political order;<sup>16</sup> ethical dilemmas with working with ‘less-

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<sup>10</sup> The Feinstein Center at Tufts University and the UK's Overseas Development Institute and its related components, such as the Humanitarian Policy Group and the Humanitarian Practice Network, tend to dominate the research on practice-oriented humanitarian issues.

<sup>11</sup> See for example: Benedict Dempsey and Amelia Kyazze, ‘At a Crossroads: Humanitarianism for the Next Decade’ (London: Save the Children, 2010), pp. 12-13.

<sup>12</sup> See: Sarah Collinson and Samir Elhawary, ‘Humanitarian Space: A Review of Trends and Issues’, Humanitarian Policy Group Report 32 (London: Overseas Development Institute, 2012).

<sup>13</sup> See: Harriet Cochrane, ‘The Role of the Affected State in Humanitarian Action: A Case Study on Pakistan’, Humanitarian Policy Group Working Paper (London: Overseas Development Institute, 2008); Paul Harvey, ‘Towards Good Humanitarian Government: The Role of the Affected State in Disaster Response’, Humanitarian Policy Report 29 (London: Overseas Development Institute, 2009); and ‘The Role of Affected States’ Section, *Humanitarian Exchange*, 43 (London: Humanitarian Policy Network, June 2009).

<sup>14</sup> See: ‘Building Resilience: The EU's Approach’, European Commission, Humanitarian Aid and Civil Protection, Development and Cooperation, March 2014.

<sup>15</sup> See: ‘Report of the 4<sup>th</sup> Security Management Initiative Senior Security Management Seminar: Sovereignty, Security and Humanitarian Action’, Geneva, 22-24 November 2009.

<sup>16</sup> See: ‘Ambiguity and Change: Humanitarian NGOs Prepare for the Future’, The Alan Shawn Feinstein International Famine Center (Medford, MA: Tufts University, 2004).

than-democratic' states and in armed conflicts;<sup>17</sup> and the political implications of aid provision,<sup>18</sup> is yet another strand. Works investigating the necessity of taking a conflict sensitive approach to working in emergencies (associated with the 'do no harm' approach),<sup>19</sup> and the role and importance of customary and informal institutions at the local level in fragile states suffering from conflict,<sup>20</sup> can also be grouped together. Finally, the importance of establishing legitimacy by NGOs in peacebuilding settings, an important concept this research seeks to build upon, has also been elaborated upon.<sup>21</sup>

Each of these themes is relevant and important and adds nuance to a description of the relationship between humanitarian INGOs and states, and it is important to ground the current research in the context of the global aid system. However, a gap exists in the literature related to both how humanitarian INGOs and states actually negotiate the parameters of their relationship in practice and, more importantly, why they interact in those ways and not others.<sup>22</sup> With few exceptions the literature describes the problem without examining it in a theoretically coherent way.

This study attends to this gap by examining the relationship between a particular humanitarian INGO and state in a specific context of civil conflict. The perspective of this study is that a heuristic process of deep empirical research through case studies is indicated in order to develop a sound theoretical framework. As such this research examines the case study of the changing relationship between Médecins Sans Frontières-Holland (MSF-H) as a representative of a humanitarian INGO and the Government of Sri Lanka (GoSL) as a representative of a state. The background context of the study

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<sup>17</sup> See: Daniel A. Bell and Joseph H. Carens, 'The Ethical Dilemmas of International Human Rights and Humanitarian NGOs: Reflections on a Dialogue Between Practitioners and Theorists', *Human Rights Quarterly*, 26 (2004), pp. 300-329; and Hugo Slim and Miriam Bradley, 'Principled Humanitarian Action and Ethical Tensions in Multi-mandate Organizations in Armed Conflicts', World Vision (2013).

<sup>18</sup> See: David Keen, *Complex Emergencies* (London: Polity, 2008), pp. 116-148; Mark Duffield, *Global Governance and the New Wars: The Merging of Development and Security* (London: Zed Books, 2001), pp. 75-107; and Kurt Mills, 'Neo-Humanitarianism: The Role of International Humanitarian Norms and Organizations in Contemporary Conflict', *Global Governance: A Review of Multilateralism and International Organizations*, 11:2, April-June (2005), pp. 161-183.

<sup>19</sup> See: Nona Zicherman, et al., 'Applying Conflict Sensitivity in Emergency Response: Current Practice and Ways Forward', Humanitarian Practice Network, Network Paper 70 (London: Overseas Development Institute, 2011); and Wafula Okumu, 'Humanitarian International NGOs and African Conflicts', *International Peacekeeping* 10:1 (2003), pp. 120-137.

<sup>20</sup> See: Gemma van der Haar, 'States and Non-state Institutions in Conflict-affected Societies: Who do People Turn to for Human Security?', Occasional Paper #6, Wageningen University, 2013.

<sup>21</sup> See: Oliver Walton, 'Conflict, Peacebuilding and NGO Legitimacy: National NGOs in Sri Lanka', *Conflict, Security and Development* 8:1 (2008), pp. 133-167.

<sup>22</sup> MSF attempts, in their book *Humanitarian Negotiations Revealed: The MSF Experience* (Claire Magone, Michael Neuman and Fabrice Weissman (eds.) (London: Hurst and Company (2011)), to give its side of the story concerning negotiating access, but this examination fails to adequately take into account the respective governments' viewpoints. In addition, the crucial question of why states act the way they do is not adequately explored. This work is illustrative of the gap in the literature.



is civil war, a precarious period for a state and a natural operating environment for a humanitarian agency. The study investigates the relationship between MSF-H and the GoSL during two periods of Sri Lanka's civil war—the second half of 2006 when the war was restarting, and the period of the end of the war between late 2008 and early 2009.

To develop the background for this specific case study three articles will be reviewed from the 2008-2009 period. The GoSL's interaction with external actors during the end of the war has been given greater attention in the literature than earlier periods of the nearly three decade long conflict as the war's ending period is in many ways more illustrative of the tensions between states and INGOs. Without proper contextualisation, however, the 2008-2009 period becomes less explicable. As such this thesis will delve into earlier periods in order to provide this contextualisation. As a way to introduce many of the most relevant themes a short review of the most pertinent issues from the 2008-2009 period is in order.

David Keen has written extensively on the dilemmas of aid provision in Sri Lanka and elsewhere. Specific to Sri Lanka in the period of 2008-2009 Keen discusses differing ways to frame the issue. One way in which to view the relationship between an INGO and a state in the Sri Lankan context is through Arendt's 'lesser evil' concept. This states in essence that one reaction to an unacceptable situation is to try to mitigate the negative consequences by cooperating, if not collaborating, with the stronger force. Keen asks if this is what INGOs do when they have 'argued that they have a duty to provide international relief even if this means quietude on human rights abuses'?<sup>23</sup> This sets as a dichotomy silence versus duty of care. This is an intriguing way to frame the choices INGOs make in how they relate to states and is a valid theoretical perspective. This thesis, though, argues that the relationship is more nuanced than this. Although there is certainly a reaction by INGOs to the actions of states, the relationship may not always be as black and white as the 'lesser evil' formulation frames. Shouldn't the relationship in fact be understood as more of a two-way interaction; a constructed relationship? Later chapters of this thesis will go into more detail on these issues. Also, Keen discusses the public voice of organisations, but does not analysis the internal discussions of organisations, a noteworthy gap in the analysis.<sup>24</sup>

In general, Keen's study focuses on how the GoSL instrumentalised the aid community and makes a blanket judgment that the aid community failed to resist this instrumentalisation. This perceived

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<sup>23</sup> David Keen, 'The Camp' and 'The Lesser Evil': Humanitarianism in Sri Lanka', *Conflict, Security and Development* 14:1 (2014), p. 2.

<sup>24</sup> Keen, 'The Camp', p. 5.

failure demands a closer inspection, and will be accomplished through tracing how the relationship between INGOs and the GoSL changed over time. For, as stated above, the 2008-2009 period should not be seen in isolation of how the relationship developed in other periods. What is also missing is a deeper perspective of the humanitarian actors themselves.

As seen in the Keen article, policy discussions and critiques concerning the last period of the war often revolved around the instrumentalisation issue. Another example of this view is an article by Norah Niland,<sup>25</sup> which also includes two reactions in response. The first is by John Holmes,<sup>26</sup> during this period the UN Under-Secretary General and Emergency Relief Coordinator, and the second by Miriam Bradley,<sup>27</sup> from the Graduate Institute, Geneva. Niland's article begins the discussion by discussing instrumentalisation of aid, the use of Global War of Terror rhetoric, and justifications of action based on the concept of sovereignty.

In Niland's view the international community prioritised geo-political considerations over stopping the 'unrestricted war'.<sup>28</sup> As with Keen's argument, this is a valid perspective but is overly generalised and needs to be nuanced in a number of ways. On one count the 'international community' should not be lumped together. INGOs are not the UN, development INGOs are not humanitarian INGOs, and the ICRC is unique to all the others. Each actor is different, and each organisation has a different mandate. There is a need to disentangle the various mandates, motivations, and responses. And what is 'humanitarian'? What is 'political'? And how do the two relate to each other? Niland also speaks of the access versus advocacy tension, calling it a 'false dichotomy'.<sup>29</sup> This thesis will test this view. A point of agreement between the perspective of Niland and this research is that the relief community needed 'a more effective strategy for coping with narratives and agendas'.<sup>30</sup>

John Holmes responded to Niland that there had developed a 'mythology of events' surrounding the end of the Sri Lankan war that was not helpful to the debate.<sup>31</sup> He disagreed with the general idea that the international community had completely failed in its action and responsibility, and argued for a more nuanced approach to the discussion. To Holmes 'the crucial question' was whether more

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<sup>25</sup> Norah Niland, 'Sri Lanka: Unrestricted Warfare and Limited Protective Humanitarian Action', *International Development Policy* 6.1 (2014), pp. 1-26.

<sup>26</sup> John Holmes, 'Humanitarian Action and Protection. A Comment on Norah Niland's 'Sri Lanka: Unrestricted Warfare and the Limited Protective Humanitarian Action'', *International Development Policy* 6.1. (2014).

<sup>27</sup> Miriam Bradley, 'Sri Lanka: Limited Humanitarian Action—Or a Lesson in the Limits of Humanitarian Action?', *International Development Policy* 6.1. (2014).

<sup>28</sup> Niland, 'Sri Lanka', p. 2.

<sup>29</sup> Ibid

<sup>30</sup> Niland, 'Sri Lanka', p. 13.

<sup>31</sup> Holmes, 'Action and Protection', p. 15.

good could have been done if the international community had worked ‘exclusively on the stopping of the war and the protection concerns of those caught up in it, in the way it has been suggested we should [have]. I do not believe so.’<sup>32</sup> Rather, in Holmes’ view, ‘the government was (and is) highly resistant to public attempts to pressure them, and inclined to ignore entirely those who do this to the exclusion of efforts to work with them in practical ways, and those who focus more on making a public splash than on trying to get their arguments accepted in private.’<sup>33</sup> This is an essential debate and one which deserves more attention. This also brings to the fore the core question of how much INGOs discuss these issues internally as they prepare to react to events. It also brings into play the issue of red lines. Are there red lines? Yes there are in the opinion of Holmes, but they were not reached in the Sri Lankan case.<sup>34</sup>

Bradley provides a more academic response than the practitioner-oriented response from Holmes. Bradley agrees that NGOs do indeed require a more sophisticated political understanding in order to perform their duties, but wonders if this is too much to ask of organisations working in the midst of conflict.<sup>35</sup> Bradley also argues that a deeper understanding of the Sri Lankan case was needed than was provided by Niland, and that comparisons with other conflict situations must also be made. Academic theories were available to assist with gaining this deeper understanding and for use in making comparisons.<sup>36</sup>

Looking at the question from another angle, Labonte and Edgerton<sup>37</sup> describe a framework for understanding how states deny access to humanitarian organisations. In their view there are three types of denial: Bureaucratic obstruction, the intensity of the hostilities itself (insecurity), and targeted violence against humanitarian personnel and theft.<sup>38</sup> But the important question is why do states want to deny access in the first place? Labonte and Edgerton argue that state behaviour is not *ad hoc*—denial ‘can constitute a valuable policy tool for national authorities and reflects prevailing perceptions of the norms associated with humanitarian access and civilian protection’.<sup>39</sup> Normative perceptions of humanitarianism and how they align with political goals informs a state’s policy response.

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<sup>32</sup> Holmes, ‘Action and Protection’, p. 19.

<sup>33</sup> *Ibid*

<sup>34</sup> *Ibid*

<sup>35</sup> Bradley, ‘Sri Lanka’, p. 23.

<sup>36</sup> Bradley, ‘Sri Lanka’, p. 25.

<sup>37</sup> Melissa T. Labonte and Anne C. Edgerton, ‘Towards a Typology of Humanitarian Access Denial’, *Third World Quarterly* 34:1 (2013), pp. 39-57.

<sup>38</sup> Labonte and Edgerton, ‘Typology’, p. 39.

<sup>39</sup> Labonte and Edgerton, ‘Typology’, p. 40.

What this view elicits is the need to look at deep structures and discourse. Labonte and Edgerton use a interpretivist approach in their work, which argues that the ‘ontological assumptions that some objective, ‘real’ world exists are flawed’, and as such behaviour should be understood as only being ‘influenced *in part* by one’s environment, but also by one’s subjective perception of that environment’.<sup>40</sup> In cases where there is an intersubjective understanding of norms by the elites these norms will inform policy. This thesis does not share this theoretical approach but does use an allied perspective that relationships are believed to be constructed and will evolve through social interactions, particularly through discourse.

Some observations can be made from this brief review of recent research concerning both the Sri Lanka case and more generally on the theme of the dilemmas faced by humanitarian actors in dealing with both states and difficult humanitarian crises. First, research needs to be more nuanced, based on primary source materials and internal discussions, and each type of actor should be treated as a unique entity. Second, discourse needs to be analysed better. And third, there is a gap in the theoretical understanding of such findings. This thesis begins therefore where these other studies leave off, that is, with the aim to provide a more nuanced analysis of the interactions of the INGOs and states. Both the empirical and theoretical gaps are addressed in this research.

It should be noted from the onset that although the context of this case study is Sri Lanka it is not a study *of* Sri Lanka. The goal was not to deeply explore the Sri Lanka civil war but to explore how MSF-Holland interacted with the Government of Sri Lanka during specific time periods of that conflict. The choice of using a case study methodology and the rationale for the selection of Sri Lanka are each described below. This study’s findings also do not apply to other types of humanitarian actors, such as the International Committee of the Red Cross (ICRC),<sup>41</sup> the United Nations, or multi-mandate organisations, but restrict themselves to the relationship between a purely humanitarian INGO and a state. This research also investigates the role of an *international* NGO in Sri Lanka, and does not purport to apply to the role of *national* NGOs in that context.<sup>42</sup> Finally, non-state armed actors are also interacted with by humanitarian INGOs in analogous ways to states but this thesis does not describe this relationship.

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<sup>40</sup> Labonte and Edgerton, ‘Typology’, p. 42.

<sup>41</sup> Strictly speaking, the ICRC is not an NGO as it has an internationally recognised formal mandate.

<sup>42</sup> Concerning the role of national NGOs in Sri Lanka see, for example: Walton, ‘Conflict, Peacebuilding and NGO Legitimacy’, and Oliver Walton, ‘Everything is Politics’: Understanding the Political Dimensions of NGO Legitimacy in Conflict-affected and Transitional Contexts’, Working Paper #22, Bath Papers in International Development and Well-being, University of Bath, May 2013.

Within these limitations, the concepts of principles, politics, and identity dominate the case study's findings. Principles should be viewed as the manifestation of the moral project in which humanitarian actors engage. The humanitarian imperative can be boiled down to the expression of the humanitarian principles of humanity, impartiality, independence, and neutrality. Politics is obviously the milieu of the state, the reference point for its identity, and its primary concern. Identity is the nexus of the clash between the two worldviews. To a large extent the relationship between MSF-Holland as a humanitarian INGO and the Government of Sri Lanka as a representative state can be characterised as an evolving interpretation of identity, involving each actor's own identity and the perceived identity of the other. This relationship was mediated, and negotiated, through discourse. More concretely, the structure of the relationship was built on two core elements—the striving of a humanitarian INGO to access populations in need in the midst of crisis, and the instinct of a state to treat such actors as threats. In this process the state fulfilled its duty as a sovereign actor with the prerogative to decide upon who was a friend and who was an enemy and to deal with each appropriately, whether within or outside the bounds of the normal legal order. And the humanitarian INGO fulfilled its duty as a moral actor in attempting to help others in need. To label this clash of imperatives it is argued that a process of securitisation occurred, which MSF-Holland reacted to through an attempt at desecuritisation.

Based on these findings a theoretical framework in the form of a negotiation structure is proposed to conceptualise this type of evolving relationship. It is argued that the two actors determined the form of their relationship through an on-going process of negotiation, a negotiation between moral and political imperatives mediated through the discourse of identity. This should not be understood to be simply the case of representatives of the two parties sitting across the table negotiating their terms of engagement. Rather, negotiations occur through a wide variety of methods, but always involving discursive interactions. The essential point is that these negotiations take place within a structure—a set of rules, norms, and procedures which can be described and understood. Such a relationship is constructed and not predetermined or simply based on material factors. The background and development of the argument is described in more detail below, followed by a fuller presentation of the negotiation structure derived from this case study's findings.

## **II. Theoretical Background**

As elaborated upon above, there is a theoretical gap in the literature concerning the relationship between humanitarian INGOs and states. One of the main challenges to be met with in the present research is to find a way to better understand this relationship and begin the process of generalisation.

Before describing the proposed negotiation structure, through which it is proposed this relationship can be best understood, it is necessary to provide the background upon which the theoretical framework is based.

As there are two normative frameworks in tension in the relationship between states and humanitarian INGOs—a domestic sovereignty and state responsibility set and an internationally applicable humanitarian norms set, the role of international norms regimes and their impact on domestic state behaviour provided a useful starting point for conceptualising how MSF-H and the GoSL interacted. The literature, however, is largely focussed on the effects of the international *on* the domestic—how international norms, expressed by actors operating externally, have influenced domestic political developments within a state.<sup>43</sup> The current research has taken an alternative perspective by focussing on the international *in* the domestic—how MSF-H as an external actor developed a norms-based relationship with the GoSL whilst operating on its territory. Although global organisations may have an impact on domestic policy development without operating within a state, humanitarian organisations attempt to work on a state’s territory and alongside a state structure, intimately proximate to the ongoing political sensitivities resulting from civil crises.

The significance of this proximity and localisation of action is that, as sovereign actors states retain the prerogative to decide on the parameters of such organisations’ work and thus can make and enforce decisions to limit, or even completely restrict, the presence of INGOs working on their territories. This is particularly the case during ‘states of exception’, such as civil conflicts, when states decide upon who is friend and who is enemy and take appropriate action. In such circumstances states can securitise international actors by designating their presence, their identity, their provenance, and/or their work as a security threat which must be managed. As such this study has applied both Carl Schmitt’s concept of the political and the securitisation approach as elaborated by Buzan, et al., as theoretical tools to help understand how and why the relationship between states and humanitarian INGOs is structured as it is. These theories and perspectives unlocked the door to understanding how the relationship was viewed by states.

In *Political Theology*, Carl Schmitt defined the concept of sovereignty in reference to the idea of prerogative: ‘The sovereign is he who decides on the state of exception’.<sup>44</sup> This idea of deciding on

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<sup>43</sup> An exemplary work is Martha Finnemore, *National Interests in International Society* (Ithaca, NY: Cornell University Press, 1996). This literature is reviewed in more detail in chapter one.

<sup>44</sup> Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago: University of Chicago Press, 1985), p. 5.

a ‘state of exception’—and the related prerogative to make decisions based on this state of exception, is at the core of the interaction between states and INGOs. In this study a state of exception will be correlated to a context of civil war. An additional aspect of Schmitt’s work which is particularly relevant to this research is the ‘friend and enemy’ distinction: ‘The specific political distinction to which political actions and motives can be reduced is that between friend and enemy’.<sup>45</sup> To Schmitt the friend and enemy distinction is independent of other judgments, such as ‘good and evil’ and ‘beautiful and ugly’, and does not ‘draw upon all of those moral, aesthetic, economic, or other distinctions’.<sup>46</sup> The enemy is a ‘stranger’, and ‘in a specially intense way, existentially something different and alien, and so in the extreme case conflicts with him are possible’.<sup>47</sup> Such a distinction, particularly in times of conflict, will generate an emotional reaction whereby the enemy is *treated* as evil and ugly, even though such characterisations are not at the basis of the political distinction, and indeed those who are truly evil and ugly are not by definition the enemy and can be, politically speaking, a friend.<sup>48</sup>

Securitisation is, precisely, this process of defining an issue, or in this study’s case a type of international actor, as an existential threat.<sup>49</sup> An issue or an entity can be non-political, which does not elicit state involvement, politicised, which does entail a state’s interest, or securitised, which, in effect, brings forth a state of exception and inspires sometimes extra-judicial but most certainly quick and decisive governmental involvement in the management of the threat.<sup>50</sup> In the view of Buzan, et al., ‘the exact definition and criteria of securitisation is constituted by the intersubjective establishment of an existential threat with a saliency sufficient to have substantial political effects’.<sup>51</sup> However, an issue is securitised ‘only if and when the audience accepts it as such’, and one argues one’s case through the use of discourse.<sup>52</sup> Friends and enemies can be designated by a political actor, but these designations must be described and justified and this process is implemented through discourse. This process of securitisation implemented through discourse plays a prominent analytical role in this case study, as does the underlying nature of the political as defined by Schmitt. These

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<sup>45</sup> Carl Schmitt, *The Concept of the Political* (Chicago: University of Chicago Press, 2007), p. 26.

<sup>46</sup> Schmitt, *Concept of the Political*, pp. 26-27.

<sup>47</sup> Schmitt, *Concept of the Political*, p. 27.

<sup>48</sup> Ibid

<sup>49</sup> Barry Buzan and Lene Hansen, *The Evolution of International Security Studies* (Cambridge: Cambridge University Press, 2009), p. 214.

<sup>50</sup> Buzan and Hansen, *Evolution*, p. 214.

<sup>51</sup> Barry Buzan, Ole Waever and Jaap de Wilde, *Security: A New Framework for Analysis* (London: Lynne Rienner, 1998), p. 25.

<sup>52</sup> Ibid

concepts will be more fully explored in chapter one, as will the humanitarian norms set against which states react.

Humanitarian INGOs have a number of options in reacting to the securitisation process. On one extreme is to ignore the threat, lay low, and try to weather the storm. If this tactic does not work, an INGO is at high risk of being found unprepared and forced to react hastily. On the other extreme is to counter-attack. In this reaction the INGO does not try to desecuritise itself but tries to securitise the state. This is a high-risk tactic with little chance of success as an INGO has much less credibility and room for manoeuvre than does a state. Another choice is to withdraw from the game, ceding the field altogether. A further option is to submit to the demands of the state, thus remaining on the field but giving complete control to the state as final arbiter of the rules of play. The final alternative is to try to negotiate a positive space within which to work through a process of desecuritisation. This is the perspective, for the most part, that MSF-H took in its dealings with the GoSL. It should be noted that there may be other response options available to an humanitarian INGO, depending on the specific context. This list pertains solely to the case study under research.

A constructivist approach was essential in analysing the relationship between the actors as ideas, rather than material factors, were the primary focus of the research.<sup>53</sup> In international relations constructivism ‘emphasises the social and relational construction of what states are and what they want’.<sup>54</sup> For this study that is only half the story, as what INGOs want and are, and how they react and relate to states, is just as important. How the GoSL and MSF-H constructed their relationship was the essential question. It is argued that this social and relational process of construction between the GoSL and MSF-H was based on discourse—a ‘more or less coherent framework for what can be said or done’, bounded by a structure, and which ‘includes both semantic and pragmatic aspects’.<sup>55</sup> The case study found that a whole range of political and security acts were performed through discourse. The importance of discourse and its analysis is intimately linked with the securitisation approach, as securitisation is implemented through speech acts. The GoSL portrayed humanitarian INGOs as threats through words and actions and humanitarian INGOs such as MSF-H had to react to this characterisation. MSF-H continuously tried to gauge the views of the GoSL through analysing discourse. To a large extent this was through reading, analysing, and responding to media sources. MSF-H expected that the GoSL would also be sensitive to MSF-H’s discourse, and as such MSF-H

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<sup>53</sup> Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999), p. 1.

<sup>54</sup> Ian Hurd, ‘Constructivism’, in Christian Reus-Smit and Duncan Snidal (eds.), *The Oxford Handbook of International Relations* (Oxford: Oxford University Press, 2008), p. 299.

<sup>55</sup> Jacob Torfing, *New Theories of Discourse: Laclau, Mouffe and Zizek* (Oxford: Blackwell, 1999), p. 300.



attempted to itself inform and manipulate the discursive environment. This securitisation—desecuritisation dynamic was informed by the domestic and international political and security context and as such this context was a major focus of analysis in this study. The next section will discuss in more detail the major finding of this study—the negotiation structure.

### **III. The Negotiation Structure**

The primary relationship under consideration in this case study is one of negotiation. To Mill, as implied by the opening quote, a negotiation would benefit from better mutual understanding. Such a view is tested as the case study progresses, for in such a negotiation structure each side has its own objectives and interests which must be met and considered. For a humanitarian INGO a condition of being labelled an enemy and a threat is hopefully replaced by a condition of being seen as a legitimate actor with whom a state can negotiate. The objective of negotiation is thus to create this positive discursive space. For INGOs engaged in negotiation the primary objective is to create the ‘space’—physically, legally, and morally, for an identified population in crisis to safely and securely access humanitarian assistance. Humanitarian actors will commonly make reference to humanitarian principles in this negotiation, a theme discussed in more detail in chapter one. States—as represented by governments,<sup>56</sup> are concerned with issues of national security, the social contract with their populations, their international standing, and their sovereignty, amongst other issues.

The proposed negotiation structure can be visualised in the diagram below and summarises the findings of the study. For this study a structure ‘describes the general properties (rules, norms, and procedures) of a social, cultural or political system’.<sup>57</sup> It therefore acknowledges the existence of a system and then provides the necessary description of the elements which make up the system. The system can be designated as that of negotiation. The negotiation structure describes the relation of the external (a humanitarian INGO) *in* the internal (a state). As is shown in the diagram, the two norms sets—‘the state’ and ‘humanitarianism’, and the actors—a humanitarian INGO and a government—are in tension, and their relationship is constructed through discourse. The actual interaction needing explication is the attempt of humanitarian INGOs to work and the resistance of governments to their work, within the context of civil war. It is proposed that the outcome of the negotiation is informed by political considerations—the designation of friends and enemies in the Schmittian way, and in the prerogative of sovereign actors to determine a threat profile and to

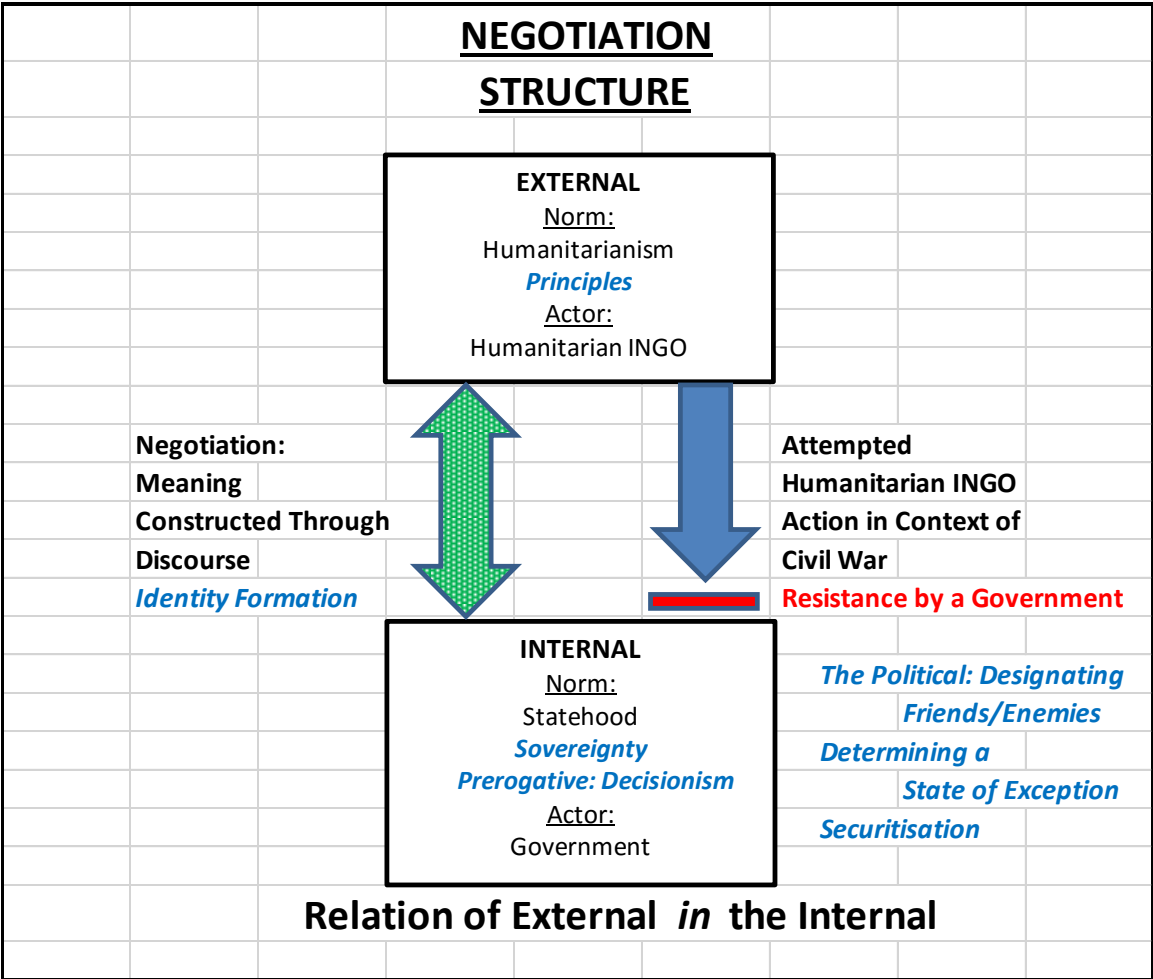
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<sup>56</sup> Governments are the actually existing representatives of states, and therefore, though the norms set concerns the political category of states, negotiations are conducted with governments.

<sup>57</sup> Torfing, *New Theories*, p. 81.

mitigate against threats through securitisation. Action must however be argued for and this is done through discourse. Securitised agents have the option to try to desecuritise themselves, also through discourse.

**Fig. 1: The Negotiation Structure: The Relation of the External *in* the Internal**



Humanitarian INGOs would benefit from referencing this negotiation structure in their approach to negotiating access. Understanding the securitisation process would be particularly useful for such INGOs. It would also behove governments to more fully recognise the benefits of humanitarian principles in addressing some of their own concerns, though the onus is on the humanitarian INGOs themselves to properly communicate their usefulness. Humanitarian INGOs must do a better job at communicating their specific nature and the norms upon which they operate. States must do a better job in differentiating between the various types of international actors, their specific mandates, and

their limitations. Politics, principles, and identities are powerful forces which inform the negotiation process.

#### **IV. Methodology**

##### **4.1. The Case Study Methodology**

A case study methodology allows for a heuristic approach, in that variables and hypothesis will be inductively identified,<sup>58</sup> important to this overall research project which seeks to establish and test a theoretical understanding of the negotiation structure from the bottom up. A diachronic methodology has been used in that changes over time have been traced, so that there are within-case comparisons to be made as each case is not a monolithic whole. There were many choices of cases to study, so a few words about the rationale for the choice of MSF-H and Sri Lanka. MSF was chosen as an example of a 'pure' principled humanitarian INGO. Given the focus on the humanitarian norms set it was felt best to study an INGO which was not conflicted by having both humanitarian and developmental agendas. Also, the organisation's advocacy mandate brought a set of norms and moral issues into sharp focus which created a sometimes more vigorous background for negotiations. MSF-Holland was specifically chosen based on privileged access to archival materials, though as stated there was no first-hand involvement on the part of the researcher in MSF-H's work in Sri Lanka. Sri Lanka was chosen as a graphic case of difficult relations between INGOs and governments, and the long lasting nature of the civil war allowed many periods and changes in relations over time to be chosen from. There was thus a large within-case variance in the Sri Lanka example, as relations ebbed and flowed over different periods. In addition, the MSF archives and the Sri Lankan discursive environment are both data rich. The Sri Lankan context is also a prototypical case—that of civil war, where humanitarianism and state responsibility are both most clearly tested, and the Sri Lanka case can be compared to other (like) examples of civil conflict. And finally, the explanation of a government's use of discourse vis-à-vis humanitarian INGOs is not well researched and the Sri Lanka context provides for an adequate research environment for this research.

Negotiations change over time, and tracking these changes was a main aim of the study. To do this a periodisation was needed. For the purposes of this comparative study the focus was on the periods 2006 and 2008-2009, though a short review of the previous periods, particularly the operations related to the tsunami, is made. Two specific time segments of the period under consideration were

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<sup>58</sup> Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge, MA: MIT Press, 2005), p. 75.

focussed on—summer-autumn 2006, and autumn 2008 to spring 2009. These two periods are good examples of the securitisation process. They are also fairly well documented. They formed a narrative whole as they are connected and form parts of a specific period of the conflict. In the first step the Sri Lankan government's view of events from 2006, as presented through the media and in addition supplementary governmental documents, was reviewed to provide depth of understanding about evolving governmental policies, actions, and deliberations. In the second step MSF-H's reaction to the 2006 events and decisions made by the GoSL were described and analysed. This analysis was based on internal MSF-H documentation. A similar process was implemented concerning the 2008-2009 period.

This process tracing exercise uncovered the connections between developing events and the GoSL's response, all related specifically to the work of humanitarian INGOs in the conflict. Process tracing is a method to examine the link between different contextual elements and how this link expresses itself in a particular context. The aim is to not only examine what happened but also how it happened, including how actors explain their 'actions and behaviour'.<sup>59</sup> At a fundamental level, 'uncovering the reasons that actors give for their actions is a key aspect of the empirical investigations'.<sup>60</sup> Understanding the reasons the GoSL gave for its policy decisions and the factors which went into their decisions was of prime interest in this case study. The 'narrative explanation' of the causal path that led to a specific outcome was an important research interest.<sup>61</sup> It should be noted, however, that the process tracing findings from this case study did not determine an ironclad cause and effect relationship between events and policy decisions, as establishing a truly scientifically provable causal relationship was unrealistic, but they did point to significant associations between events, discourse, and policy changes. Specific to causality within the securitisation approach, Balzacq has cautioned against putting too much emphasis on causality over congruence.<sup>62</sup> Nevertheless, more work needs to be done to tailor the process-tracing methodology to researching this study's theme, allowing it to more firmly establish causal links.

The actual process being traced in this study concerned how domestic and international events led the GoSL to construct the discursive and policy environment it did and how MSF-H reacted to these developments. The end point was INGOs being securitised; the process was how this happened and

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<sup>59</sup> Donatella della Porta and Michael Keating (eds.), *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective* (Cambridge: Cambridge University Press, 2008), p. 232.

<sup>60</sup> Della Porta and Keating, *Approaches*, p. 233.

<sup>61</sup> Della Porta and Keating, *Approaches*, p. 234.

<sup>62</sup> Thierry Balzacq, 'The Three Faces of Securitization: Political Agency, Audience and Context', *European Journal of International Relations*, 11:2 (2005), p. 192.

why. The core chapters answer the questions: What happened, by and to whom, where and when? And what events were important from the perspective of the research question—how was the relationship between the GoSL and MSF-H actually constructed? The process tracing exercise is told in narrative form and first sets out the factual story before a presentation of the uncovered associations between events, discourse, and policies.

#### 4.2 Discourse Analysis and Sources

The analysis of the available discourse was focused on what words were used and what meanings were ascribed to them and how these words, and meanings, were understood—or misunderstood—by each actor. What concepts, experiences, and worldviews lay behind the semantic choices and the form and structure of the communications? And finally, how were these meanings negotiated through discourse? The analysis of the texts was informed by the approach of *verstehen*—understanding—which highlights the necessity of understanding the context, experiences, and worldview of the actors, and situating the study in a particular time and place, accomplished by the above described process tracing exercise. Without this understanding the texts could not be properly analysed. Indeed, the epistemology underlying *verstehen* states that knowledge must be understood historically and that there are no timeless bodies of truth.<sup>63</sup>

The relationship between MSF-H and the GoSL was viewed from both sides—the discursive environment as created by the GoSL, and the reactions to this environment by MSF-H, focusing on the organisation’s understanding and use of discourse. Discourse in the context of this study was considered to be the public manifestations of the views of the actors and was therefore any text or verbal communication which demonstrated these views. For MSF-H this included internal documentation and public statements. For the GoSL it comprised the discursive environment as articulated in a wide variety of media, civil society, academic, and governmental sources. From the GoSL’s side, outside direct communications with individual organisations, the media were the most efficient way to communicate its policies, warnings, and the like. The media therefore were heavily used by the GoSL to create a discursive environment upon which actions were based and justified. As such this study considered the media as an essential channel of communication and meaning formation between MSF-H and the GoSL.

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<sup>63</sup> Roger Hausheer, ‘Three Major Originators of the Concept of *Verstehen*: Vico, Herder, Schleiermacher’, in Anthony O’Hear (ed.), *Verstehen and Humane Understanding* (Cambridge: Cambridge University Press, 1996), p. 48.

The major sources for this study were primary source materials from MSF-Holland's Sri Lanka archives, Sri Lankan governmental and civil society sources, and relevant sources from other inter-governmental and international agencies. Semi-structured interviews with MSF-Holland officials were also conducted, as well as informal interviews with Sri Lanka experts. Complete access to all MSF-H archives—digital and hard-copy—related to Sri Lanka was kindly granted by the organisation. The MSF-H documentation can be put into the following categories: Operations, support departments, humanitarian affairs/context analysis, and press and communications. The MSF-H documentation is all in the English language, in the possession of the researcher, and available for further research under the limiting conditions of the research agreement between MSF-H and the researcher. Many MSF-H former staff were interviewed, as were other key informants from the aid community, international relations experts, Sri Lanka researchers, and other relevant actors. Some interviews were for attribution and some purely for background understanding.

Government of Sri Lanka materials included newspaper articles giving the government's view, parliamentary reports, public statements by government officials, public interviews by government officials, and published administrative decrees, laws, and bureaucratic processes. Sri Lanka sources also included documents and statements from other organisations (national and international), publications from academics and think tanks (national and international), and journalistic materials (national and international).

It must be asked, however, how far media reports can assist in establishing associations between events and policy decisions. It would of course be better to have access to internal governmental documentation and records of behind-closed-doors governmental deliberations. But as this was not possible, other sources had to be relied upon. Media sources, paired with the other primary and secondary sources—academic works, public statements, and public documents, all coalesced to form a sense of the government's decision-making. In addition, if the theory is valid that the GoSL used discourse to securitise humanitarian INGOs, then the media would be a key channel of communication for the government. In the end it is difficult to adequately answer this question, as without intimate knowledge of the government's views—their backroom discussions—it is impossible to know how far the discursive environment as presented in the press matched the actual views of government officials. But, it should be noted, INGOs such as MSF believed this was so and took action based on this belief. It was this initial observation in fact which led this researcher to focus on the analysis of the discursive environment as the analytical starting point. Regardless, this is a limitation of the research and this methodological question needs further development.

There were practical challenges to accessing the media, especially newspapers, and deciding on what sources were appropriate and relevant to the analysis. A few words about the research process is thus in order. All of the remotely accessible (through the internet) Sri Lankan newspaper sources in English for the periods under consideration were accessed. An attempt was made to categorise the sources by political orientation. As such where pertinent the political leanings of the newspapers are mentioned. Practically the research process was as follows. Once the periods of study were determined, every issue of the set of newspapers was accessed. Each issue was read in its entirety to find any mention of the themes relevant to the research. Relevant articles were saved in their entirety, classified into thematic categories, and cross-referenced with other articles where indicated. The selected and recorded articles numbered in the hundreds, although in the actual presentation of the discourse analysis a much smaller set of illustrative articles are specifically referenced. It is this empirical basis of the research which sets this thesis aside from other theoretical treatments, as the observations and findings are formulated from a deeply explored empirical basis.

#### 4.3. Structure of the Argument

Part I sets the stage for the analytical chapters through the presentation of background material. Chapter one discusses the political and the humanitarian norms sets. Carl Schmitt's conception of the political—as the designation of who is friend and who is enemy, is taken as an underlying analytical tool, followed by the idea that in some circumstances states take on an attitude that a state of exception must be declared, where normal rules must be laid aside in order to respond to an abnormal situation. A state on this view has the prerogative to make such a decision, and in fact the identification of who has such a right is a method for determining who is sovereign. From this background environment a government has the option to securitise threats, that is, label them an existential threat and decide upon a course of action to mitigate against the threat. This entails the use of discourse to argue that a threat exists and that certain actions are necessary to respond to it. The chapter next discusses humanitarianism and the concepts vital to humanitarian organisations, such as humanitarian principles. The chapter ends with a historical review of the changing relationship between states and aid actors.

Chapter two presents and discusses the Sri Lankan civil war and the actors under consideration—the Government of Sri Lanka and MSF-Holland. Key aspects of Sri Lankan society are discussed, such as what constitutes a 'just society'. The civil war is the dominant theme, defining the contextual parameters the GoSL and humanitarian actors acted within. Administrative issues are a key theme in this discussion, as much of the tensions around the relationship centred on these aspects of the

context. A number of challenges to MSF's identity are examined, related generally to working with 'strong states' and specifically to operating within the Sri Lankan context. The key concepts brought forward from these discussion are those of principles, politics, and identity. The chapter ends with a discussion of the periods researched.

Part II follows on from the themes discussed in chapter two and centres around the overlapping concepts of principles, politics, and identity. The analytical chapters do not address these themes discretely but their treatment is woven into the presentation of the narrative. Chapters three and four implement a process tracing exercise related to the GoSL in the 2006 period. Chapter three examines the process of creating the self and others—the designation of friends and enemies, through a discussion of political developments, the progress of the war, and the fall-out of the tsunami response. Chapter four delves into the practice of securitisation by setting-out a set of dichotomies by which international actors were viewed by the GoSL and the meaning attached to these views which underpinned the securitisation process. The actual actions taken by the GoSL against humanitarian agencies are then reviewed and as examples stories are told about the experiences of the ICRC and MSF.

Chapter five presents the research findings on MSF-H's deliberations and decisions in the 2006 period. The chapter is broken down into three parts. The first is a process tracing of MSF-H's reactions to the developing events. As the external must work within the constraints of the internal, the process tracing presents how MSF-H reacted to events and determined its strategy and tactics for responding to these events and GoSL policy decisions. The second section performs a discourse analysis on how MSF-H both understood and analysed GoSL discourse and what discourse it itself used. The end of the chapter presents a review of where MSF-H stood at the end of the 2006 period in terms of strategy and tactics and how these related to the discursive elements of most concern to the organisation.

Chapter six presents the 2008-2009 period. The central questions addressed in this chapter are: Why was the outcome of this period different than the 2006 period? Did any of the fundamentals change in the intervening time segment, or was the 2008-2009 context essentially different in some manner? The chapter first reviews major events between late 2006 and early 2009, analysing their relevance to the outcome, and then explores more in-depth the GoSL's actions and policies vis-à-vis INGOs at the end of the study period. A process tracing procedure is again used to do this, then an analysis of discourse used by the GoSL is performed in a similar manner as in chapter four. The second part of the chapter presents MSF-H's reaction to these events and GoSL's discourse. The chapter ends with



an integrated review of where the two actors ended-up at the conclusion of the research period. This chapter is heavily reliant on primary source discourse as there is a paucity of academic literature focussing on these themes and thus this chapter is empirically rich.

Chapter seven focusses on the interpretation of the findings from the previous chapters. Why were decisions made? Why were certain actions taken? And why was discourse used in the way it was? The research framework is drawn upon, in that the external, in this case MSF-H, represents the humanitarian norm; a moral norm. And the internal actor—the GoSL, represents the political norm; the norms of statehood and sovereignty. The way in which these norms interact—the humanitarian norm within the political norm, both against a background context of civil war, is interpreted using the theoretical framework. In reaction to these political considerations, MSF-H's thinking and conduct is analysed from the standpoint of humanitarian principles. The development of three 'triangular' relationships are elaborated upon: The relationship between INGOs and the two armed actors—the GoSL and the LTTE; the tensions between the GoSL, INGOs, and the Sinhalese Buddhist nationalist worldview as represented by the political parties JVP and JHU; and the trilateral dynamic between the international community, INGOs operational in Sri Lanka, and the GoSL. An integrated interpretive narrative explains how the two actors constructed their relationship through the use of discourse and in relation to the developing civil war, focussing on: The tensions between the nature of humanitarian INGOs and the context of civil war; the state as internal and INGOs as external agents; and the varied use of humanitarian principles between states and humanitarian agencies. The perspectives of both the GoSL and MSF-H are elaborated upon.

The thesis ends with a concluding chapter which begins by briefly reviewing the overall findings of the study before discussing what further research needs to be conducted. The chapter ends with a brief examination of the cases of Ethiopia, Russia, and Darfur (Sudan) to test how the theoretical framework and methodology may be used in other contexts. As noted above, this study should be considered a first step in a larger research agenda which aims to provide a validated and useful theoretical framework for understanding how states and humanitarian INGOs interact. This research does not try to solve the puzzle of how states and humanitarian INGOs can improve their relations, but attempts to provide some insights into how the puzzle may be approached and understood more effectively.

## **Part I**

### **Introducing**

### **Theory, Context, and Actors**

## **Chapter One**

### **The Relationship of the External in the Internal**

#### **I. Introduction**

The goal of this chapter is to present the sets of norms as used and understood by both the external and the internal. The normative concepts of ‘statehood’ and ‘humanitarianism’ will be examined in some detail. However, it is important to first clarify the use of the term ‘norms’. The last part of the chapter discusses the historical and contemporary interactions between these two norms sets as tracing the development of the dichotomy between the two sets is essential to understanding the negotiation structure.

#### **II. Norms in Tension**

A discussion of how ideas are intersubjectively understood by the actors under study plays a vital role in the research, and as such needs development from the start. The introduction of the norms sets will be important to help associate the empirical data to the theoretical framework. The state norms set will be discussed in relation to the concepts of prerogative, the state of exception, and securitisation in order to bring out the elements associated with states most pertinent to the study, namely, the concept of sovereignty and the essential desire for control over, and protection of, a territory and population. The in many ways contrasting humanitarianism norms set—grounded on moral concepts, will be introduced to set up a tension which will be the basis of the later analysis, as the two sets are not only in opposition but are in constructive tension. These tensions are mediated through negotiations between the specific actors, negotiations which are conducted through discourse.

##### **2.1. Norms**

For this study norms will be understood as ‘shared expectations about appropriate behaviour held by a community of actors’.<sup>1</sup> Norms are socially constructed, and in an idealised world are wholeheartedly shared by the relevant actors, although in the actually existing world they are often highly contested and prone to mutual disagreement. Even within a norms set there is often disagreement on

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<sup>1</sup> Martha Finnemore, *National Interests in International Society* (Ithaca, NY: Cornell University Press, 1996), p. 22.

what constitutes the proper understanding of the ‘shared’ norms. For example, different humanitarian organisations may understand the norm of humanitarianism differently. What an actor understands to be appropriate behaviour for either themselves or others, inside and outside their norms sets, creates a potential for action. How that understanding is actualised in behaviour, and how others react to these actions, is a critical question. The two ‘shared’ sets of norms under consideration in this study are those concerned with state behaviour and the behaviour of humanitarian actors. If even within norms sets there are differences of opinion, then between norms sets there can be considerable tensions. One particular way in which tensions can build is when there is a clash between international and local norms, as the global distribution of norms has not been straight forward. Newly introduced international norms do not encounter a normative vacuum at the local level. Local norms, even those which had been borrowed from global sources before being adapted to local conditions, will often have a ‘robust legitimacy’ which moderates the reception of international norms.<sup>2</sup> This study considers not only the two sets of norms in tension, but two actors which come from different cultural and political backgrounds.

With this starting point in mind, relevant aspects of the two norms sets will be reviewed. These norms sets are presented and discussed in relation to the two actors—MSF-Holland and the Government of Sri Lanka during the periods under consideration. Here it is important to decide upon how the two sets are understood by the two actors under study. Therefore, for example, the state norms set will not be inclusive of a theocracy or a communist dictatorship, but will describe a former colonial, functioning, if not authoritarian-leaning, democracy, and the humanitarian norms sets will not speak to multi-mandate organisations but purely humanitarian agencies only.

## 2.2. The State

The ‘state’ plays a leading role in this study, yet it is an actor which is difficult to encapsulate in a pithy definition. This section attempts to review only the most pertinent elements to the study in order to contextualise later discussions, and as such much is left unelaborated upon. The following sections will first clarify definitions and settle terms for use throughout the rest of the study, and will then elaborate on the issue of civil war and the states reaction to such sensitive contexts. But first it is necessary to consider the questions: What is the primary unit of analysis when considering the relationship between a humanitarian INGO and a specific country? Is the locus of interaction between an INGO and a state—an INGO and an abstract sovereign political entity; or an INGO and a specific

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<sup>2</sup> Acharya, *Whose Ideas Matter?*, p. 5.

government? It is argued that, although the concepts of state and sovereignty are both pertinent reference points, the primary interaction is between an INGO and a government. Particular governments, at specific points in time and in relation to a unique set of events, are the actually existing political entities which interact with INGOs. Equally, INGOs approach humanitarian crises through negotiations with the government in power and operate within the administrative structures in place at the time of the intervention. These negotiations are held at discrete points in time and concern distinct operational objectives.

Governments, in the midst of negotiations with INGOs, will often make reference to the state and, particularly, to sovereignty. It is important to describe how these concepts are understood. Here this set of concepts—the state, sovereignty, and government, will be analysed as political concepts. Though legalistic aspects of these concepts are valid frames of reference, the focus here is on a political analysis—how these political concepts are used by states in their interactions with INGOs. The starting point, therefore, is not how a theoretical state *ought* to behave, but rather how a particular state acts in practice—the actions of states, the rationale for these actions, and how these actions are interpreted and reacted to.

#### 2.2.1. The Nature of the Political

To Carl Schmitt ‘the concept of the state presupposes the concept of the political’.<sup>3</sup> As it is a foundational concept, it is important to first think about what exactly it is to be ‘political’. A standard dictionary definition of politics is that it is the art and science of government. Many would expand this definition to include all aspects of social interaction; gender roles, economic systems, class relations, have all been considered under the rubric ‘political’. When considering the approach a government takes in reacting to the presence of an external agent on its territory—the external *in* the internal, Schmitt’s ‘friends and enemies’ dichotomy may be the most useful.<sup>4</sup> In Schmitt’s sense, the friends and enemies distinction does not define one actor as evil and one as good, but it does allow for one actor to, at least temporarily, define another actor as a stranger, an outsider, an ‘other’. A third party, however neutral, cannot determine who is in which category, the designations must be determined by the political actors themselves. It is important to note that ‘the friend and enemy concepts are to be understood in their concrete and existential sense, not as metaphors or symbols.’ Determining who is friend and who is enemy is based on a sense at any given time of who is a threat

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<sup>3</sup> Schmitt, *Concept of the Political*, p. 19.

<sup>4</sup> Schmitt, *Concept of the Political*, pp. 26-27.

and who is being supportive.<sup>5</sup> By designating another as an enemy a conflictual relationship is established. Adding nuance to this general Schmittian approach, it is here argued that norms, though to Schmitt not a valid reference point for the final decision itself, at least must be factored in to an actor's justification. A norm does not dictate to an actor who is friend and who is enemy, but when making such a distinction an actor must refer to how this decision relates to established norms. This will become clearer when the securitisation approach is added to the theoretical framework and the important role of discourse is discussed.

Specific to the Sri Lankan context Dayan Jayatilleka, a Sri Lankan academic and diplomat, in an article discussing Sri Lanka at sixty used a quote from Schmitt to set the scene: "The only question therefore is this: is there an absolute enemy and who is it in concreto?"<sup>6</sup> Jayatilleka understood the Sri Lanka context as a continuous search for friends and enemies, as does this study.

#### 2.2.2. States, Governments, and Sovereignty

Defining the concept of the state is highly problematic. The term could more rightly be considered 'an idea or cluster of concepts, values and ideas about social existence', than as an objective reality.<sup>7</sup> A state is an abstract construct, a legal and political designation, a convenient fiction used to regulate political interactions. The term, and the designation, facilitates how different actors engage with each other—discrete universally accepted categories are easier to manage than vague ethnic or cultural constructs. But such a category is only superficial in nature. In reality each state develops in a unique historical, geographical, cultural, and religious context and will focus on different aspects of what it means to be a state. States have 'different structures, political institutions, cultures and values. We do not see 'the state''.<sup>8</sup> The modern state system has been greatly influenced, and can be said to be derived from, Western political and philosophical developments. Though this model has greatly informed how non-Western states have formed and developed, there are regional and national differences which inform attitudes to the roles and responsibilities of states. The Asian Values rhetoric and debate in the 1990s points to this.<sup>9</sup> The non-Western view on statehood is an important feature of the Sri Lanka case study and will be discussed in subsequent chapters.

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<sup>5</sup> Schmitt, *Concept of the Political*, p. 27.

<sup>6</sup> Dayan Jayatilleka 'Sri Lanka at Sixty: Fighting the Absolute Enemy', *Transcurrents*, 30 January 2008.

<sup>7</sup> Andrew Vincent, *Theories of the State* (Oxford: Basil Blackwell, 1987), p. 4.

<sup>8</sup> Vincent, *Theories*, p. 7.

<sup>9</sup> See, for example: Boll, 'Asian Values Debate' and Langguth, 'Asian Values Revisited'.

Regardless of the problematic nature of the concept, a working definition of a state should be proposed. Rather than a highly theoretical definition, commonalities will be elaborated upon. For the purposes of this study a state will be considered as a political entity which is acknowledged internationally to represent a defined geographical area and population. The key point is that a state is a political entity which faces outward—in other words, it can decide who is friend and who is enemy. Changing perspective 180 degrees, a state is only a state if considered as such by other states. Internationally this is clear. The rules of the game are that states are autonomous, that other states should not interfere in their affairs, and that all states are equal—*de jure*, if (certainly) not *de facto*.

Domestically the situation is muddier. In Max Weber's oft cited definition 'a state is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory'.<sup>10</sup> Coercive authority is an essential element of a state and helps a government to tie together its subjects.<sup>11</sup> As will be brought out in the analysis of the interaction between humanitarian INGOs and governments, coercion plays a major role in both the creation of the humanitarian crisis itself and the need for negotiations to define the space for humanitarian action within the crisis. Another key aspect is that the state is separate from society—the public and private spheres are different constructs.<sup>12</sup> States claim 'hegemony or predominance within a given territory over all other associations, organizations or groups within it'.<sup>13</sup> A state will, therefore, consider itself above society and, it will be argued, take a fundamentally political and instrumentalist view in its relations with civil society. The external face of statehood will be much less important in this analysis than an understanding of the relationship between those who represent a state and society and how political actors use coercion, domestically, to meet their political objectives.

Even more than for the definition of a state, sovereignty is an evasive concept. Indeed, 'in spite of the agreement on some...basic issues, sovereignty remains an ambiguous concept'.<sup>14</sup> For the purposes of this study sovereignty will be very simply defined. Two core ideas will be understood: The idea that there is 'no final and absolute authority exist[ing] elsewhere', that is, outside the state, and that 'there is a final and absolute political authority in the political community', that is, internally.<sup>15</sup> Therefore, a state is 'sovereign' in the sense that there is no higher *external* political

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<sup>10</sup> Max Weber, 'Politics as a Vocation', in Hans H. Gerth and C. Wright Mills (eds.), *Max Weber: Essays in Sociology* (New York: Oxford University Press, 1946).

<sup>11</sup> Harold J. Laski, *The State in Theory and Practice* (London: George Allen and Unwin, 1935), p. 21.

<sup>12</sup> Patrick Dunleavy and Brendan O'Leary, *Theories of the State: The Politics of Liberal Democracy* (London: Macmillan Education, 1987), p. 2.

<sup>13</sup> Vincent, *Theories*, p. 19.

<sup>14</sup> Thomas J. Biersteker and Cynthia Weber, *State Sovereignty as Social Construct* (Cambridge: Cambridge University Press, 1996), p. 2.

<sup>15</sup> F.H. Hinsley, *Sovereignty* (Cambridge: Cambridge University Press, 1986), p. 26.

authority which has the authority to make decisions and that *internally* the state apparatus is the final political decision-making body. In this sense sovereignty is one aspect of statehood; it is not itself a legal as much as an integral aspect of the political classification of being an internationally recognised 'state'. In the contemporary world sovereignty 'bestows supreme political authority upon the government. That sovereignty is an institution simply means it is a set of rules that states play by'.<sup>16</sup> Finally, as with statehood, the concern here is with the 'internal face' of sovereignty, for, 'even though states may be sovereign relative to one another, they possess clearly different authorities over their own societies'.<sup>17</sup> This study is concerned with this, the domestic, understanding and use of sovereignty, which is the most important location of tension concerning the relationship between states and humanitarian INGOs.

It is important to be clear about the use of the terms 'state' and 'government'. In this study a government is made up of individuals who perform the actual 'steering' at any given time.<sup>18</sup> Governments, which represent states, are in practice 'composed of political actors who are simultaneously members of social sectors, classes and interest groups; they have their own ideological, ethical and religious beliefs; their own programmatic priorities; and their specific views on how best to fuse these complex personal traits with their roles as state officials'.<sup>19</sup> Therefore, a government is a collection of officials holding formal power at a given time and place. A government represents the sovereign state. It is the only actually existing political entity which can be directly interacted with, as it is made up of people, and decisions are made by them, rather than by abstract political constructs. One of the most important sets of decisions such a political actor makes relates to the conduct of a civil war.

### 2.2.3. Civil War: Prerogative Exposed

The context of civil war is one of the most perilous times for a government representing the state. In such an environment the involvement of external actors is particularly sensitive. But how then to define 'civil war'—what are the essential features? The simplest definition of civil war includes the following four elements: 1. 'Protracted internal violence aimed at securing control of the political and legal apparatus of a state', 2. A situation involving incumbents—the government, and

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<sup>16</sup> Georg Sorensen, *The Transformation of the State: Beyond the Myth of Retreat* (Basingstoke: Palgrave Macmillan, 2004), p. 103.

<sup>17</sup> David A. Lake, 'The State and International Relations', in Christian Reus-Smit and Duncan Snidal (eds.), *The Oxford Handbook of International relations* (Oxford: Oxford University Press, 2008), p. 49.

<sup>18</sup> Vincent, *Theories*, p. 29.

<sup>19</sup> T.J. Pempel, 'Restructuring Social Coalitions: State, Society and Regime', in Rolf Torstendahl (ed.), *State Theory and State History* (London: Sage Publications, 1992), p. 118.



insurgents—anti-government militant groups, 3. A context where members of society must define their attitudes in reference to the conflict—a potential polarisation of society, and 4. The potential of third party involvement—whether diplomatic, economic or military in nature.<sup>20</sup> This basic set of features will be taken as the working definition, but absent from point four in the list concerning third party involvement is mention of the aid system. This is an often missing aspect of civil war which must be included in the analysis of any context where aid actors are present. Whether aid actors consider themselves as politically involved or not, states may very well consider them as third party actors, and thus to be either pushed away or manipulated to decrease their negative influence.

In terms of examining the relationship between humanitarian INGOs and governments in times of civil war, the most intriguing ideas are those of prerogative and exception. The context of civil war is an especially sensitive time for a government. These are the periods when the prerogative of a government to proactively manage an emergency demands them to define the rules, informal and formal, concerning the engagement of external actors and these feed into the negotiations between the actors. These negotiations therefore must be contextualised. By prerogative it will be understood as an exclusive power to command, decide, rule, or judge. This concept of prerogative leads directly to the concept of the state of exception.

#### 2.2.4. The State of Exception

Exposing the parameters of prerogative is a first step, but how that decision-making power is used when confronted with an emergency such as a civil war is another question. What constitutes a ‘state of emergency’, or better a ‘state of exception’, and what powers a sovereign actor has in relation to such contexts, needs further development. The concept of exception should be understood as a policy or decision which is not in conformity with a general rule, principle, or law. In other words, the authority to make exceptions to the law—in this context either to increase or to decrease the space within which INGOs work. Law can mean both domestic and international law. Humanitarian INGOs enter into a context with an idea about what is legally correct and possible, though governments are often perceived to be capricious in how they manage the rules of the game. It is important for INGOs to understand the factors and thinking which underlie a government’s change in behaviour and the changing legal rules.<sup>21</sup>

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<sup>20</sup> Graham Evans and Richard Newham, *The Penguin Dictionary of International Relations* (London: Penguin Books, 1998), pp. 64-66.

<sup>21</sup> For a discussion about exceptionalism in the contemporary era, see: Jef Huysmans, ‘International Politics of Insecurity: Normativity, Inwardness and the Exception’, *Security Dialogue* 37:1 (2006), pp. 11-29. Are changes

A legal code bases itself on a set of agreed upon norms, whilst a ‘guardian of the constitution’ may need to act outside those norms.<sup>22</sup> This parses the difference between a positivistic approach and ‘personalistic decisionism’,<sup>23</sup> where a sovereign decides on the best approach outside formal legal limits. Leaders such as those confronted with a civil conflict may certainly agree with the weight placed on decision-making, and the case of Sri Lanka tests this idea. Importantly, legal norms are also only effective if they are enforced. Without being enforced they cannot be realised. Part of the argument between the international legal order as defended by the international community and the GoSL related to this very question of enforcement. The international community, as is often the case with domestic judiciaries, argued for a positivistic interpretation of the legal norms, but a government such as the GoSL when faced with a crisis resisted the enforcement of legal norms which did not assist it in responding to the crisis. Such a government will attend to the political and sociological context rather than take a positivistic view that the legal order operates in isolation of the dictates of a particular environment. There is, however, a danger that states of exception will become permanent,<sup>24</sup> and for the case of Sri Lanka there were concerns about this as the civil war continued into its third decade.<sup>25</sup>

This, then, is the type of context in which humanitarian INGOs attempt to negotiate access. Without an adequate understanding of the state of exception concept, as is the case with prerogative, INGOs will not understand the basis for negotiations. Schmitt’s work, however, did not adequately elaborate on the actual process of defending a state of exception to the population and other actors. Therefore the second part of the theoretical framework—securitisation, must now be introduced.

#### 2.2.5. Securitisation

Schmitt’s work paints a picture of a state as an autonomous political agent, at least domestically, which has the prerogative and capacity to make decisions based on current political and security needs in relation to external, and internal, actors and factors. Distinctions are made between friends and enemies whereas friends may be supported but enemies will be resisted and managed. The securitisation approach is an elegant way in which to frame this process of distinction, and it can be

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in exceptionalism more about changes in how international politics and diplomacy are viewed than about debates about international law?

<sup>22</sup> John P. McCormick, *Carl Schmitt's Critique of Liberalism: Against Politics as Technology* (Cambridge: Cambridge University Press, 1997), p. 214.

<sup>23</sup> McCormick, *Schmitt's Critique*, p. 213-216.

<sup>24</sup> McCormick, *Schmitt's Critique*, p. 216.

<sup>25</sup> Asanga Welikala, *A State of Permanent Crisis: Constitutional Government, Fundamental Rights and States of Emergency in Sri Lanka* (Colombo: Centre for Policy Alternatives, 2008).

argued that the securitisation perspective is rooted in ‘the politics of enmity, decision, and emergency’ which is at the basis of Schmitt’s conceptualisation of the political order.<sup>26</sup>

A state, as represented by a governmental apparatus, must protect the interests of the population it purports to serve. Faced with an identified threat a government will attempt to stabilise the situation caused by this threat in order to achieve security. Security issues are sometimes serious enough to be framed as existential threats. In the standard securitisation structure as outlined by Buzan, et al., the thing which is existentially threatened is the referent object.<sup>27</sup> The actor which reacts to the threat on behalf of the referent object is the securitising agent. In addition functional actors are those which ‘affect the dynamics of a sector’ and who ‘significantly influences decisions in the field of security’.<sup>28</sup> Given the fact of an existential threat a securitising actor will feel justified in instituting emergency measures beyond the rules that would otherwise be in place. It is important to understand that amity and enmity—Schmitt’s friends and enemies—‘are generated by the actors and are not reflections of material conditions’;<sup>29</sup> therefore, constructed. On this view security is essentially a matter of survival.<sup>30</sup> In the political sector sovereignty and ideology are the major issues under consideration, and in the societal sector collective identities such as religion are the most important themes. A threat is often another political or military actor, but even civil society actors can serve this role. Regardless, these threats endanger a referent object. This may be a community, a nation, an ecosystem, or a state, amongst other examples. A securitising actor then acts on behalf of the referent object and responds to the threat by instituting actions outside the normally acceptable realm. Other actors may function in roles which affect the dynamics of the securitising act, such as pressure groups.

But how to consider the securitisation act?<sup>31</sup> How is it implemented? The securitisation act is in fact a speech act—the utterance itself is the act. By speaking certain words something is done.

The essence of a discursive action is its compelling power to cause a receiver or an audience to perform a deed. Thus, discourse and action are linked in two distinct ways. First, discourse is part of agency in that it instantiates a sphere of action wherein agents dealing with defined questions operate ‘agonistically’. This is the constitutive side of discursive action, which is

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<sup>26</sup> Michael C. Williams, ‘Words, Images, Enemies: Securitization and International Politics’, *International Studies Quarterly* 47 (2003), p. 515.

<sup>27</sup> This study uses a generic version of the standard form of the securitisation approach. For a review of criticisms and responses of this approach see: Williams, ‘Words, Images, Enemies’.

<sup>28</sup> Buzan, et al., *Security*, p. 36.

<sup>29</sup> Buzan, et al., *Security*, p. 19.

<sup>30</sup> On state ‘fears’ see Olav F. Knudsen, ‘Post-Copenhagen Security Studies: Desecuritizing Securitization’, *Security Dialogue* 32:3 (2001), pp. 355-368.

<sup>31</sup> Jef Huysmans, ‘What’s in an act? On security speech acts and little security nothings’, *Security Dialogue*, 42:4-5 (2001), pp. 371-383. See especially for a discussion on the ‘acts’ themselves.

another way of saying that through mutual knowledge, discourse shapes social relations and builds their form and content.<sup>32</sup>

Facilitating conditions however must be present in order for the speech act to work, and therefore a speech act is a ‘combination of language and society’.<sup>33</sup> Intriguingly, a basic grammar of security can exist, though each sector will have its own particular dialect, i.e., politics, society, military, or in this research humanitarianism. It is therefore important to examine the organisational logic of a speech act. The key to emphasise here is how the concept ‘security’ is used and textual analysis is vital to determining this logic. Essentially the securitisation act isn’t about the threats that actually exist, but about how the issue is presented. And the way to study this process is to analyse the discourse used to communicate the nature and urgency of the perceived existential threat. The question is, when does an argument sufficiently resonate with an audience to convince that audience to tolerate violations of rules that would normally be in force? It should be understood, though, that a securitising act is not always successfully implemented. On occasion a securitising act is attempted—referred to as a securitising move, but the intended audience is not receptive to the argument and therefore will not consider the ‘threat’ a security issue. As such the securitising process is a negotiation between the securitising agent and audience. But once a securitised context has been established discussion ends and actions are taken on the newly established priorities.

Finally, on this view the concept of security should be considered in a negative light, as it can be seen as a failure to deal with issues in a normal manner. But this failure can be reversed by implementing a desecuritisation process which puts the situation back ‘into the ordinary public sphere’.<sup>34</sup> The desecuritisation process works by removing the existential threat in the minds of the audience, thus allowing for a reversion back to relying on normal policies, rules, and ways of interacting with the security threats. The goal should be desecuritisation and in many ways it is the more important, though challenging, process. In a desecuritised world there would be no need for behaviour outside normal modes of behaviour. As will be seen, although the GoSL attempted to securitise MSF-Holland, as well as other INGOs, a process of desecuritisation was attempted by these ‘threats’. If the internal considered the external as a threat to the state which had to be reacted to with robust methods, sometimes outside the bounds of common norms, the external did not remain

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<sup>32</sup> Thierry Balzacq, ‘The Three Faces of Securitization: Political Agency, Audience and Context’, *European Journal of International Relations*, 11:2 (2005), pp. 171-201.

<sup>33</sup> Buzan, et al., *Security*, p. 32.

<sup>34</sup> Buzan, et al., *Security*, p. 29.

silent but chose, amongst other options such as withdrawal, a desecuritisation process targeting the same audience as the internal.

As a way to refine the concept, and one useful for this study, the themes of audience, context, and power can be nuanced.<sup>35</sup> First, an audience's frame of reference, its readiness to be convinced, and its ability to grant licence to the authorities to make security decisions, must be taken into consideration. Second, the contextual environment must be taken into account to be able to understand how an audience understands securitising discourse. And third, the ability and capacity of the securitising agent to nuance its discourse to best effect should be gauged. These themes of audience, context, and capacity will be highlighted throughout the case study. The question of audience will be debated by MSF-H, an understanding of the context is implicit in the methodology of the study, and the capacity of the GoSL in gauging and manipulating the discursive environment is a relevant point of analysis.

#### 2.2.6. Summary

It is in this environment that humanitarian INGOs and governments negotiate the parameters—moral, legal, and political—of their relationship. The question isn't about sovereignty *per se*, but about the state's prerogative, as fulfilled by a government—its executive power—to decide on a state of exception and, more importantly, to manage the state of exception. It is a process of securitising humanitarian INGOs through the use of discourse. A period of civil conflict, framed as a humanitarian crisis, is the specific state of exception under consideration. The relevant government is understood to have the prerogative—the authority—to both declare a state of exception, to securitise certain issues and actors, to make decisions about how to manage such a crisis point, and to justify their actions through discourse. In practice, the concept of the state of exception should not be confused with an actual declaration of a state of emergency, as not all states of exception end with the declaration of a state of emergency. For the purposes of this study a state of exception is viewed as any point in time when the normal legal and administrative system—rules and procedures—related to humanitarian INGOs was fundamentally changed in ways humanitarian INGOs could not understand. Examples are new INGO registration systems, changed visa policies, or adapted reporting systems, each in their own way restricting or even blocking the work of humanitarian INGOs and instituted in opaque and legally questionable ways. In most such cases the government explained the changes on the basis of national security, a perceived threat to sovereignty, and the

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<sup>35</sup> Balzacq, 'Three Faces of Securitization', p. 187.

like. In such a context the questions INGOs ask are: What is the limit of a government's prerogative? What laws and legal codes apply, to the INGOs and in relation to the evolving context? How do these changes inform the status of the relationship with the government and the population? The important point is for it to be understood that the rules have changed and that the government has entered into a new way of conceptualising the boundaries of its action and the acceptability of external actors' actions. But the external actor itself has a certain perspective, and it is now the time to turn to the humanitarian norms set and how humanitarian actors view their role in the world.

### 2.3. Humanitarianism

The concept of humanitarianism is defined and used in different ways by different actors. A humanitarian intervention which uses military resources will not be discussed, debated, understood, and reacted to in the same way as a peaceful intervention by a humanitarian INGO. Even within the humanitarian NGO sector the term will be used in somewhat nuanced ways depending on the mandate and perspective of the organisation. For the purposes of this study humanitarianism will be defined as a Dunantist humanitarian organisation would define it. Dunantist organisations, named after the founder of the International Committee of the Red Cross Jean Henri Dunant, aim to strictly subscribe to the humanitarian principles upon which the Red Cross was founded and limit their action exclusively to humanitarian crises. The core principles are humanity, independence, neutrality, and impartiality. Independence refers to the objective of proactive disengagement from political and military actors by humanitarian actors; neutrality to not taking sides in a conflict or expressing political views; and impartiality to providing assistance to those in greatest need and without discrimination. But at the heart of humanitarianism is, obviously, humanity. Humanitarians are concerned with human suffering, human interaction, and the human ability to feel empathy and compassion for, and then respond to, the needs of other humans. Humanitarianism is in essence a moral project. As a moral concern, there are characteristics humanitarianism is meant *not* to exhibit. Humanitarian action must not be profitable and must not be political. Humanitarianism can be 'conceived of as an unchallenged good characterised by impartial charity for a common humanity, and something which transgresses the confines of state sovereignty'.<sup>36</sup>

There is much confusion amongst states and aid organisations alike concerning the difference between actors which engage in 'humanitarian' activities as well as development operations (multi-mandate NGOs), and those which should be considered as purely humanitarian organisations. A

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<sup>36</sup> David Campbell, 'Why Fight: Humanitarianism, Principles, and Post-structuralism', *Millennium-Journal of International Studies*, 27 (1998), p. 498.

Dunantist humanitarian actor, such as MSF, only implements activities in what are considered to be ‘humanitarian crises’. Humanitarian crises are situations where a population’s existence is in jeopardy, either through structural violence, war, displacement, massive outbreaks of disease, or natural or man-made disasters. Multi-mandate organisations implement both development and humanitarian activities, and sometimes implement both kinds of activities in the same context. Purely humanitarian organisations ground their legitimacy in humanitarian principles exclusively, and differentiate themselves from development or multi-mandate organisations which are widely perceived to be more ‘political’, ‘activist’, and even sometimes ‘collaborative’, in nature. From an operational perspective humanitarian aid is understood to be assistance and action designed to save lives, alleviate suffering, and maintain and protect human dignity in the midst of crises. It is intended to be short-term in nature—once a crisis is over the need for humanitarian action stops. Humanitarian aid traditionally focusses primarily on material assistance—food, shelter, water, sanitation, and medical aid.

Discussions of principles often dominate debates within humanitarian organisations. On the notion of neutrality and remaining apolitical, there have been long debates within NGOs about whether they are, indeed, existentially and practically, political or not. As not being a political agent is an essential component of humanitarianism, this is a core identity question. In theory humanitarianism should be limited to humans helping other humans with no underlying political agenda involved, and as such NGOs are to remain politically neutral. Thus to be internally coherent and consistent with the notion of humanitarianism they must stay outside of politics in the sense of not being overtly political actors. One should be reminded, though, of Schmitt’s warning that ‘we have come to recognize that the political is the total, and as a result we know that any decision about whether something is *unpolitical* is always a *political* decision, irrespective of who decides and what reasons are advanced’ [italics in the original].<sup>37</sup> Humanitarian INGOs, almost by definition given the work that they do and the contexts within which they operate, are intimately involved with highly political issues. Humanitarian crises are some of the most politically complex and sensitive contexts imaginable, and politics is at the core of their cause, continuation, and resolution. In this way, although not being political *actors*, humanitarian INGOs engage with political actors and work in contexts of intense political contestation. These political actors will, obviously, view any other actor—internal or external, self-proclaimed apolitical or not—as political actors in some regards. At the least, their

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<sup>37</sup> Schmitt, *Political Theology*, p. 2.

activities will have political consequences which will be reacted to on the part of the main political participants in the crisis.

## 2.4. States and INGOs

Given the above, how have, and how do, states and INGOs interact? This section will review the principal points of tension between these two actors. First the recent history of how states and the aid system have interacted will be briefly presented, then the chapter will conclude with an examination of how states have reacted to aid actors in general and INGOs in particular.

### 2.4.1. Brief Overview of History of States and the Aid System from the Cold War Onwards

The relationship between states and the aid system has changed and developed over time. Different issues have predominated and different types of actors have been at the centre of action and debate. A background knowledge of the changing relationship is necessary to situate the recent critiques of the aid system by states and states by aid actors. For the purposes of this historical review aid is inclusive of all manner of aid mechanisms and is not limited to humanitarian aid. As the chapter progresses the area under consideration will be narrowed.

### 2.4.2. The Cold War Era

In much of the recent literature on the relationship between states and aid actors the issues are presented as newly emerging trends. But the discussion of foreign aid through the lens of politics is not new. Morgenthau, in 1962, discussed the fact that ‘policies of foreign aid are frequently suspect, as serving in disguise the traditional ends of colonialism’ and that ‘foreign aid is no different from diplomatic or military policy or propaganda. They are all weapons in the political armoury of the nation’.<sup>38</sup> From the beginning of the cold war era aid was a tool in a state’s foreign policy toolbox. The cold war era can be conceptualised as a period of hegemonic states (donor states) relating to recipient states (mostly post-colonial states) in a period of geopolitical polarisation. Aid was not based on need but was a political tool, driven by strategic geopolitical necessity—aid programs were heavily influenced by short-term foreign policy decisions guided by the foreign policy establishment.<sup>39</sup> The objective was political influence rather than aid effectiveness.<sup>40</sup> Aid was then

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<sup>38</sup> Hans Morgenthau, ‘A Political Theory of Foreign Aid’, *The American Political Science Review*, 56:2 (1962), p. 306.

<sup>39</sup> Robert K. Fleck and Christopher Kilby, ‘Changing Aid Regimes? U.S. Foreign Aid from the Cold War to the War on Terror’, Working Paper 1, Villanova School of Business Economics (2008), p. 1.

<sup>40</sup> Thad Dunning, ‘Conditioning the Effects of Aid: Cold War Politics, Donor Credibility and Democracy in Africa’, *International Organization*, 58, Spring (2004), p. 409-423.



seen as a method of buying influence, and military and economic interests were the most important determinants of aid, especially in the later part of the cold war period.<sup>41</sup> Viewing aid from the recipient states perspective, aid created a ‘moral hazard’ for states.<sup>42</sup> They could put into place policies and set goals at variance with the aims of donor states as donor states needed the support of the recipient states in the geopolitical manoeuvrings of the cold war. Aid was used freely by local elites in recipient states to repress or co-opt local populations. Donor states turned a blind eye to such practices, or even preferred these ‘strong states’—authoritarian regimes—as they were considered more reliable and efficient.

Médecins Sans Frontières entered the stage towards the end of the cold war period (1971).<sup>43</sup> MSF interjected new concepts into the debate about the role of aid, most notably the role of advocacy in calling attention to the plight of the suffering populations during such crises. As stated by MSF, the ‘principles of impartiality and neutrality are not synonymous with silence’.<sup>44</sup> MSF’s charter states that ‘Médecins Sans Frontières observes neutrality and impartiality in the name of universal medical ethics and the right to humanitarian assistance and claims full and unhindered freedom in the exercise of its functions’. The key ideas here are the universal nature of medical ethics, the right of humanitarian assistance on the part of victims of humanitarian crisis, the right of the organisation to provide such needed assistance, and the right of the organisation to do so *unhindered*. It will be seen how these concepts made states increasingly uncomfortable.

#### 2.4.3. Post-cold War Era

The expectation moving into the post-cold war era was that aid would be re-focussed on needs. Humanitarian and development goals would take over from military and political objectives. Non-development aid resources (mostly military aid) were to be freed up for other uses, and as such the percentage of development aid funding would rise. Donor state leverage increased in this period as the polarised geopolitical world was deconstructed. Threats of sanctions and conditionality became more plausible and effective. The era of the ‘moral hazard’ was over. In fact, democratisation became increasingly important and donors expressed more distrust of corrupt and authoritarian regimes. Interestingly, attitudes also started to change regarding sovereignty issues: ‘Change in the normative

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<sup>41</sup> Sarah Blodgett Bermeo, ‘Aid Strategies of Bilateral Donors’, Annual Meeting of the International Political Economy Society, Philadelphia (2008).

<sup>42</sup> Dunning, ‘Conditioning’, p. 409.

<sup>43</sup> For a detailed discussion of MSF’s place in the political context of this period, see: Eleanor Davey, ‘Beyond the ‘French Doctors’: The Evolution and Interpretation of Humanitarian Action in France’, Humanitarian Policy Group (London: Overseas Development Institute, 2012).

<sup>44</sup> All background information can be found at: [www.msf.org/msf-charter-and-principles/](http://www.msf.org/msf-charter-and-principles/) [last accessed 25 March 2015].

and legal environment in the aftermath of the cold war means that state sovereignty is no longer sacrosanct; rather, it is conditional on good state behaviour with a responsibility to protect its own citizens'.<sup>45</sup> This is a key point and informs all subsequent discussions on both the role of aid and how donor states view the duties and responsibilities of recipient states. It can be argued that what was increasingly debated was less the fundamental concept of state sovereignty than the expectations for how states were to fulfil their responsibilities to their own populations. Related to this was the important question of what role the international community was to take if states did not fulfil these expectations.

#### 2.4.4. The 1990s and the Rise of NGOs

The 1990s saw a major growth in the numbers and influence of NGOs and a growing focus on the importance of civil society in the development project. The 2002 UNDP Human Development Report recounted that nearly 20% of the then 37,000 INGOs were formed in the 1990s.<sup>46</sup> There are many explanations for the massive growth in the number of NGOs:<sup>47</sup>

- Increased recognition of the role of civil society in democratisation and increased number of aid programs focused on democratisation
- Increased demand for independent information and analysis by donor states and inter-governmental organisations (IGOs)
- Increased possibilities for inter-connectedness based on improved communications (the fax machine in the 1990s then the internet and social media later)
- An increased availability of funding for NGOs. Donors became more mistrustful of working through certain types of states and specific governments, fearing corruption and the misuse of aid monies
- In general the poor performance of the public sector was given more attention. A 'public is bad, private is good' ideology formed<sup>48</sup>
- Increased political access for NGOs. As international and inter-governmental organisations expanded to tackle global issues, NGOs were increasingly promoted by donors to act as service providers, advocates, and agents of democratisation

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<sup>45</sup> David Kennedy, 'Humanitarian NGOs and the Norm of Neutrality: A Community Approach', Working Paper, University of Minnesota (2008), p. 27.

<sup>46</sup> United Nations Development Programme, 'Human Development Report 2002: Deepening Democracy in a Fragmented World', p. 5.

<sup>47</sup> Unless otherwise noted, summarised from: James McGann and Mary Johnstone, 'The Power Shift and the NGO Credibility Crisis', *The International Journal of Not-for-Profit Law*, 8:2 (2006), p. 65-77; and Kim D. Reimann, 'A View from the Top: International Politics, Norms and the Worldwide Growth of NGOs', Faculty Publications 4, Georgia State University (2006), pp. 45-67.

<sup>48</sup> Unattributed, 'Historical Evolution of NGOs: NGO Proliferation in the Post-Cold War Era', *Turkish Weekly* (2007), p. 5.

This new structural environment was advantageous to NGO growth and a 'pro-NGO' norm developed. For the most part states bought into, or were pressured into, this new normative structure. As states became members of international organisations they adopted standard practices, policies, and features of governance and were socialised into new norms of behaviour through peer pressure. Donor states and IGOs such as the United Nations also attempted to 'teach' states the legal models of development of civil society which were imported from the West.<sup>49</sup> This was, though, often perceived as a rather paternalistic approach by the recipient states.

In summary, NGOs became more useful as part of broader political developments in the role of aid and the relationship between the Western dominated IGOs, such as the United Nations and financial institutions such as the World Bank, and developing states. The role and expectations of civil society also changed, especially related to the process of democratisation. The traditional concept of sovereignty was being challenged. States were pressured to accept these new norms as donor state leverage was strengthened and new international norms developed which were often hard to resist. But this was an often essentially contested process.

#### 2.4.5. Post-9/11 and the Global War on Terror

In many ways the 1990s can be viewed as an 'inter-war period,' as the situation began to change yet again post-9/11 and the start of the Global War on Terror (GWOt). Aid in this period in some circumstances reverted to its role as an important geopolitical tool. For the 35 years before the beginning of the GWOt, the weight given to need in aid allocation rose; post-9/11 the weight lessened.<sup>50</sup> A new concept of 'strategic development' arose during this period, where donor states' development aid to recipient states focused on areas where returns from development *to the donor state* were the greatest.<sup>51</sup> Benefit could be judged from a political, cultural, economic, or national security perspective. Concerns also increased that some NGOs were open to be used as platforms for terrorists.<sup>52</sup> Therefore, there was a re-emergence of geopolitical considerations in aid allocation in certain circumstances and in some situations civil society was actually seen as a threat from a national security stand-point if not properly controlled by states. This was a perspective shared by both donor and recipient states.

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<sup>49</sup> Reimann, 'View from the Top', pp. 58-61.

<sup>50</sup> Fleck and Kilby, 'Changing Aid Regimes', p. 2.

<sup>51</sup> Bermeo, 'Aid Strategies', p. 3.

<sup>52</sup> McGann and Johnstone, 'Power Shift'.

#### 2.4.6. Contemporary Issues and Developments

For the most part the contemporary era remains defined by the Global War on Terror. However two additional evolving themes to mention are the development of the Responsibility to Protect concept and integrated United Nations missions. The Responsibility to Protect (commonly known as ‘R2P’) idea was derived from UN Secretary-General Kofi Annan’s report to the 2000 Millennium Assembly, where he asked the international community to come to a consensus on the question of ‘humanitarian interventions’, that is, cases where one or more states intervene militarily in another state in the name of protecting that state’s population. The International Commission on Intervention and State Sovereignty published its findings at the end of 2001.<sup>53</sup> These findings can be summarised as stating that a state has the primary responsibility to protect its own citizens, but if unable or unwilling to do so it is up to other states to intervene. It should be stressed that the primary responsibility to protect remains with the relevant state. The international community plays a monitoring and secondary role. But the fact that there is a developing consensus that there is a duty to respond in other states to protect the citizens of those states is a powerful one. The R2P concept relates to the debate on the *droit d’ingerence*, which has long been a particular feature of discussions in France on the role of the humanitarian imperative in foreign policy. Bernard Kouchner, one of the co-founders of MSF, was a prime proponent of the concept.<sup>54</sup> Bettati, a prominent French international law scholar, sees a clear link between the principle of free humanitarian access as articulated in various UN resolutions in the 1980s-1990s and the *san frontieriste* movement.<sup>55</sup> Although its adherence to the ‘right to intervene’ perspective has ebbed and flowed over the years, historically MSF’s culture has been imbued with the idea that those in the midst of humanitarian crises have a right to receive humanitarian assistance.

Another background development has been the concept of UN integrated missions, where all aspects of the UN’s involvement in a crisis—political, humanitarian, and military, are put under one coordination mechanism. This type of coherence has been widely debated, particularly concerning the inclusion of humanitarian operations in the grouping.<sup>56</sup> The logic is clear—intervene in a comprehensive manner so that all actors are working on the same problem in a coherent way. The concern on the humanitarian side relates to the idea that humanitarian action should be apolitical,

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<sup>53</sup> International Commission on Intervention and State Sovereignty (ICISS), ‘The Responsibility to Protect’, Ottawa, 2001.

<sup>54</sup> Davey, ‘French Doctors’, p. 30.

<sup>55</sup> Ibid

<sup>56</sup> Victoria Metcalfe, Alison Giffen and Samir Elhawary, ‘UN Integration and Humanitarian Space: An Independent Study Commissioned by the UN Integration Steering Group’ (London: Overseas Development Institute/Stimson Center, 2011).

impartial, and neutral, and thus should not be guided and associated with political and military activities and objectives. MSF has been especially active in speaking out against this trend.<sup>57</sup>

The general point to be taken from this review is that humanitarian aid is provided within a political context. This has always been the case, although the political context itself has changed over time. That is, the political reference points have changed over time—from the cold war bi-polar to the war on terrorism schema, but the fact of political reference points has remained constant. This does not imply that INGOs are political actors, in the sense that states are political actors, only that humanitarian assistance itself is often considered to have political consequences, regardless of the moral foundations of the humanitarian norm.

## 2.5. The View of Humanitarian International Non-governmental Organisations

Humanitarian organisations often take on an ideological perspective concerning aid provision. Ideology as a concept has been debated in MSF, for example.<sup>58</sup> Humanitarian action on one view is founded on the following ideological logic: 1. The right to humanitarian assistance is universal, 2. Victims are defined as those who are not receiving this assistance, and 3. Agencies assert their right to have access to these victims.<sup>59</sup> In practice what this means is that aid agencies show up, declare an emergency based on their own definitions of crisis, and start to save lives. But often this is done on their own terms with little reference to the policies, concerns, and capacities of the state involved. This self-proclaimed ‘right to interfere’ has in fact turned out to be ‘more of a political problem for states than a victory for humanity’.<sup>60</sup> And these types of interventions often lack legitimacy: They ‘presuppose a global civil society which gives a mandate to aid groups to intervene and that these groups have no nationality or agenda of their own’.<sup>61</sup>

Most humanitarian international agencies are Western in outlook and share a Western-based worldview concerning the role of humanitarian action. For such humanitarian INGOs neutrality, impartiality, and independence are often taken as a shorthand for disengagement *from* state structures rather than necessitating principled engagement *with* them. Principles are often used to ‘protect’ INGOs from ‘interference’ from states. Humanitarian INGOs view states as becoming more

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<sup>57</sup> See, for example: Michiel Hofman, ‘Opinion and Debate: From R2P to Peacekeepers on Steroids’, MSF-UK, 24 February 2014, at: <http://www.msf.org.uk/article/opinion-and-debate-%E2%80%98R2P%E2%80%98-peacekeepers-steroids> [last accessed 25 March 2015].

<sup>58</sup> See, for example: Andrew Cunningham, ‘Say No to Principles’, MSF-Holland internal opinion piece, 2010.

<sup>59</sup> Adapted from: Bernard Hours, ‘NGOs and the Victim Industry’, *Le Monde Diplomatique—English Edition*, 14 November 2008.

<sup>60</sup> Hours, ‘Victims Industry’, p. 2.

<sup>61</sup> Hours, ‘Victims Industry’, pp. 2-3.

‘assertive’ in their dealing with international actors.<sup>62</sup> The principle of independence is especially difficult to maintain against state assertiveness. Increasingly, bureaucratic means are being used to restrict the activities of NGOs.<sup>63</sup> A few examples will assist in presenting the INGO perspective. The focus here is on the perspectives of humanitarian INGOs and the discourse used, rather than a review of the ‘facts’ of the matter.

The Voluntary Organisations in Cooperation in Emergencies (VOICE) Newsletter number 13, May 2011, was dedicated to the question: ‘Is independent humanitarian action a myth?’<sup>64</sup> Instrumentalisation was a key theme. Wolf-Dieter Eberwein, President of VOICE, gave the view that instrumentalisation of aid can be defined as ‘the illegitimate interference on the part of governments into the field activities of humanitarian agencies’.<sup>65</sup> Instrumentalisation on the part of donor governments is ‘illegitimate’ while NGOs ‘influencing’ donors to change their practices is ‘legitimate’. The idea is clearly that states should not interfere with humanitarian INGOs but INGOs can advocate with states. Sandrine Chopin, Paris delegate for Handicap International and VOICE board member, in her article from the same newsletter entitled ‘No Go for NGOs? Worrying Trends Presents New Challenges for Aid Agencies’, argued that:

A prerequisite to an effective response to human suffering is the right of NGOs to decide when, where and how they exercise their duty to assist vulnerable populations. Aid operations must be guided by the fundamental values of humanity, independence, impartiality and neutrality: every person in need should be granted assistance regardless of political, strategic, economic and other non-humanitarian interests.<sup>66</sup>

This is the standard view of INGOs of the usefulness of principles. Chopin went on to say that ‘NGOs must live up to their acronym and remain *non-governmental*, maintaining a clear separation between their activities and state action. Only this clear separation will guarantee acceptance among the population we wish to help, and therefore ensure the efficient provision of aid.’<sup>67</sup> But this was thought not to be the actual case, as ‘recent developments, alarmingly, have highlighted **a tendency by states to forget these fundamental principles**’ [bold in original].<sup>68</sup> States, then, are viewed as the culprits.

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<sup>62</sup> As discussed in: Paul Harvey, ‘Towards Good Humanitarian Government’, Humanitarian Policy Group, (London: Overseas Development Institute, 2009).

<sup>63</sup> Paul Harvey, et al., ‘The State of the Humanitarian System. Assessing Performance and Progress: A Pilot Study’, ALNAP, 2010.

<sup>64</sup> Voluntary Organisations in Cooperation in Emergencies (VOICE), ‘Focus: Is Independent Humanitarian Action a Myth?’, *Voice Out Loud: Newsletter of VOICE* 13, May 2011.

<sup>65</sup> VOICE, ‘Focus’, p. 3.

<sup>66</sup> Sandrine Chopin, ‘No Go for NGOs? Worrying Trends Presents New Challenges for Aid Agencies’, in VOICE, ‘Focus’.

<sup>67</sup> Ibid

<sup>68</sup> Ibid

A Save the Children report from 2010 on the state of the humanitarian project made the following observation, also in line with the above view: ‘Most worrying, however, is an increase in governments taking an actively obstructive or antagonistic stance towards humanitarian response.’<sup>69</sup> The language is illustrative of the INGO perspective: ‘Obstructive’ and ‘antagonistic’, rather than, say, careful and cautious, or even responsibly deliberative. The report goes on: ‘in some cases, governments attempt to exercise greater control over humanitarian activity in their countries, and may have political incentives to restrict aid to certain troublesome regions, erect blockades or establish restrictions on people’s movements’.<sup>70</sup> On one hand the sentence fully admits that the countries are, indeed, under the responsibility of the governments, but on the other that access to aid actors should not be constrained.

The above two quotes explain well the consequence of a state of exception and the process of securitisation of INGOs, as will be discussed more fully below. However this process can be viewed from different perspectives. What is the objective behind a state’s action? To the World Movement for Democracy, in a report on defending civil society from 2008, it is stated that:

Governments have tried to justify and legitimize such obstacles as necessary to enhance accountability and transparency of non-governmental organizations (‘NGOs’); to harmonize or coordinate NGO activities; to meet national security interests by countering terrorism or extremism; and/or in defence of national sovereignty against foreign influence in domestic affairs. This report exposes such justifications as rationalizations for repression, and, furthermore as violations of international laws and conventions to which the states are signatories.<sup>71</sup>

This is a very clearly stated perspective on the behaviour of states. The securitisation process is acknowledged, but any rational basis for it is discounted. Discourse is used by states as a way of justifying bad behaviour, rather than a justified reaction to valid security threats. Intriguing assumptions are made about how governments think and act and use discourse. This is of course not to say that governments do not use discourse in this cynical way, but only to point out the underlying assumptions that are often made by INGOs when considering the behaviour of governments. In response to external actors—treated as political agents regardless of the motivation of the actor—governments are often seen to use concepts such as the state and sovereignty to create a mystique of legitimate authority, and it can be argued that ‘this mystique of the state simply shields the people

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<sup>69</sup> Dempsey and Kyazze, ‘Crossroads’, p. 12.

<sup>70</sup> Dempsey and Kyazze, ‘Crossroads’, pp. 12-13.

<sup>71</sup> International Center for Not-for-Profit Law (ICNPL) and the World Movement for Democracy (WMD) Secretariat at the National Endowment for Democracy (NED), ‘Defending Civil Society: A Report of the World Movement for Democracy’, 2008, p. 3.

behind it in government'.<sup>72</sup> Sovereignty, in fact, on one view, serves to keep the international community out of the places and minds where decisions are really made.<sup>73</sup> The Sri Lanka case provides an interesting test of these views.

The common features of the above views is that INGOs stress the moral side of the equation—aid assistance is good, the political is bad, the moral should win over the political. Principles should be respected and aid should be allowed if based on these principles, regardless of the situation on the ground. Even when it is admitted that governments have the primary role in ensuring aid provision, the behaviour of governments in this process is often viewed as a cynical expression of political and security agendas which interfere with aid provision. But as has been discussed, humanitarian aid itself has political consequences—as much as INGOs attempt to remain apolitical states will of course respond to these consequences.

## 2.6. The View of Recipient States

From the standpoint of a government there is 'a continuum between one extreme in which non-state authority sustains and reinforces the authority of the state, and, at the other extreme, a non-state authority which contests and challenges, or threatens to supplant that of the state.'<sup>74</sup> It is up to the state to decide if an INGO is a threat, a hindrance, a help, or a friend. This fits in well with the Schmittian friend—enemy dichotomy. The relationship is thus often fraught, as 'humanitarian norms, more than most kinds of norms, challenge central notions about sovereignty and the organization of international politics in important ways'.<sup>75</sup> But no norms set is adhered to completely. Many decisions which are made by both parties are based on interest rather than adherence to a norm. This may often be the case for legal directives aimed at INGOs by states, for, 'like every other order, the legal order rests on a decision and not a norm'.<sup>76</sup> INGOs themselves can also act instrumentally. They may come from a moral norms set but make decisions to implement their objectives based on interest. Although requests to states for access may be justified in terms of need and moral good, there are other interests at play for organisations, such as the need to sustain funding flow, public relations, and job security, amongst others. This fact has not gone unnoticed by states.

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<sup>72</sup> Vincent, *Theories*, p. 29.

<sup>73</sup> Peter Uvin and Leanne Bayer, 'The Political Economy of State-building in Burundi', in Mats Berdal and Dominik Zaum (eds.), *Power After Peace: The Political Economy of State-building* (London: Routledge, 2012), p. 17.

<sup>74</sup> Susan Strange, *The Retreat of the State: The Diffusion of Power in the World Economy* (Cambridge: Cambridge University Press, 1996), p. 92.

<sup>75</sup> Finnemore, *National Interests*, p. 70.

<sup>76</sup> Schmitt, *Theology*, p. 10.



States are not passive and static entities. Developing states faced with evolving international norms concerning the rights, duties, and responsibilities of sovereign states, especially in the domestic realm—norms which are often perceived as being Western-defined and dominated—will, and do, react. One reaction has been to sometimes view NGOs as replacing hegemonic states. Concerns over the infringement of sovereignty are valid no matter who is doing the ‘interfering.’ The pro-NGO norm developed through peer and donor pressure has increasingly been resisted. States often use discourse, and securitisation, in their reactions, attempting to counter these assumptions about the legitimacy and desirability of NGOs.

States therefore have legitimate concerns with how aid agencies work. But concurrently there are sometimes hidden agendas at work when governments consider how they will interact with aid actors. The following (non-exhaustive) list reviews some of these concerns and agendas:

- States may be unwilling to acknowledge that their capacity to cope with a crisis has been exceeded, and that international assistance is required
- Under some circumstances state control of aid delivery goes beyond the legitimate interests states have in ensuring a well-coordinated and managed response
- States often perceive the mere presence of humanitarian actors as a threat to their authority; this may be especially the case when dealing with authoritarian regimes
- In certain contexts states fear exposing their population to outside influences
- States under intense international criticism will especially fear political manipulation and are prone to see all foreigners as spies
- Aid organisations are often seen to be attempting to access the hidden

But on the other hand, and regardless of the above ‘hidden agendas’, it is acknowledged by most aid actors that states retain the primary responsibility for delivering of humanitarian assistance within their territories. The roles and responsibilities of states in relation to humanitarian aid are commonly conceived to be as follows:<sup>77</sup>

- States are responsible for calling a situation a ‘crisis’ and inviting foreign aid
- States should provide assistance and protection (to the population) themselves
- States should monitor and coordinate aid
- States should set up regulatory and legal frameworks for aid delivery

This dichotomy between hidden agendas and rights is, however, troubling to many aid actors. And if it is true that states have the primary responsibility to respond to crises, then the involvement of outside actors is problematic to states. ‘State policies toward NGOs range from governments treating

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<sup>77</sup> Adapted from: Harvey, ‘Humanitarian Government’, p.6.

them as threats, to cooperating with them, with the policies that ignore, seek to institutionalize (co-opt) them, or passively accept them falling in between'.<sup>78</sup> Each side faces a difficult situation.

But in the end the work of international aid actors does depend on the consent of states, whether legally, physically, or politically. This is the case whether the state is weak, abusive, or strong. There may be cases where the state exists in name only, such as Somalia, but in the vast majority of cases INGOs must seek consent (or at least not a 'no') to operate from the state, especially in cases where the state is 'strong' (meaning internationally legitimate, fully formed, and concerned with ensuring sovereignty is respected). What is interesting is that, normally, strong states provide aid, weak states receive it. The situation INGOs are most perplexed with is when populations of strong states need aid. As an Overseas Development Institute report on 'affected states' put it: 'Humanitarian agencies operating within Pakistan have to be aware that they are working within the boundaries of a sovereign state',<sup>79</sup> a state with a strong identity and bureaucracy. It is striking that it is felt that INGOs need to be reminded that states are sovereign and must be treated as such. The case of Sri Lanka will provide another interesting case of this search for consent from a 'strong state'.

### **III. Conclusion**

The relationship between states and INGOs has a long history. Although the parameters within which they have worked together have changed, the fact of both the engagement and the resultant tensions are constant. Each side has their own fears and complaints. Views on rights, responsibilities, and norms clash. The stage has been set in this chapter for the presentation of the case study, within which a real-world example of these tensions and clashes of perspectives will be elaborated. The next chapter will present the two actors in this study—the Government of Sri Lanka and Médecins Sans Frontières-Holland, and the relevant background context to both the civil war and the humanitarian response by MSF.

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<sup>78</sup> Kimberly A. Weir, 'The Paradox of NGO-State Relations', chapter from PhD thesis, University of Connecticut, 2003, p. 16.

<sup>79</sup> Harriet Cochrane, 'The Role of the Affected State in Humanitarian Action: A Case Study on Pakistan', HPG Working Paper, Humanitarian Policy Group (London: Overseas Development Institute, 2008), p.11.

## **Chapter Two**

### **The Actors:**

### **Sri Lanka, Médecins Sans Frontières-Holland, the Civil War, and the Periods Under Study**

#### **I. Introduction**

This chapter serves to introduce the Government of Sri Lanka (GoSL)<sup>1</sup> and the humanitarian INGO Médecins Sans Frontières-Holland (MSF-H). Focus falls on the latter period of the Sri Lankan civil war. Key aspects of Sri Lankan society discussed are the concept of a ‘just society’ and the dominant role of the civil war in creating the contextual parameters within which the GoSL, MSF-H, and other relevant actors operated. The administrative environment surrounding the work of INGOs is also examined in detail as many of the tensions which pervaded their relationship with the government centred around this theme. Concerning MSF globally a number of topics are covered, such as the organisation’s humanitarian identity, its view on principles and use of its public voice, and its struggles with working with strong states. The chapter ends with an examination of important dilemmas and identity questions related to MSF-H’s work in Sri Lanka and the GoSL’s reaction to such work. From this chapter’s review the themes of principles, politics, and identity stand out, which will form the conceptual basis for the analytical chapters.

#### **II. Sri Lanka**

##### **2.1. Paddy, Tank, and Temple**

The Sinhalese novelist Martin Wickramasinghe summarised the common themes of Sinhalese culture and history as the tank (water reservoir), the temple (Buddhism), and the paddy (rice cultivation).<sup>2</sup> This conception is highly idealised, as not all Sri Lankans are of course Sinhalese,

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<sup>1</sup> A note on terminology: The term ‘government’ in the case of Sri Lanka during the period of study refers to the governmental apparatus controlled by the executive president, thus inclusive of the Ministry of Defence, as Mahinda Rajapaksa as president retained the Ministry of Defence portfolio. But it is also the case that the ruling coalition in parliament heavily influenced the development of policy. Though the executive president, especially under emergency rule, had a great deal of leeway to decide policy unilaterally, the nature of politics dictated consideration of the results of parliamentary debates.

<sup>2</sup> As discussed in: Stanley Jeyaraja Tambiah, *Buddhism Betrayed? Religion, Politics, and Violence in Sri Lanka* (Chicago: University of Chicago Press, 1992), p. 110.

Buddhist, or even rice producers.<sup>3</sup> But these themes are illustrative of the Sinhalese perspective and are informative as much for what they don't talk about as what they do. A defining feature of the early, pre-colonial, period was the development of an irrigation civilisation from the first century CE onwards—the management of water resources was a prime role for successive rulers.<sup>4</sup> The paddy has also been mythologised as the locus of Sri Lankan peasant life, though these are more enduring as myths than related to contemporary reality. The hydraulic agriculture period led into the focus on plantation crops in the colonial period—coffee, rubber, and tea. From plantations the economy moved into an even more prosaic economic sector, the export of garments, which by the turn of the twenty-first century had become the largest source of foreign exchange.<sup>5</sup> The paddy and tank culture is far from the reality in the contemporary, globalised world, but Buddhism has and continues to play a very important role socially and politically—directly for the Sinhalese and indirectly for the island as a whole. The introduction of Buddhism in the first century BCE was a defining moment for the island, as it both created an enduring identity for the Sinhalese and a point of tension with other ethnic and religious groups. Thus, what goes unsaid in the inclusion of 'the temple' in the formulation of Sinhalese identity is that Buddhism's adherents have been partially responsible for a cleavage which has played a major role in the Sinhalese's violent relations with the Tamil population.

What is also left unsaid in Wickramasinghe's formulation is the influence of colonialism. Colonialism affected all ethnic groups, albeit in different ways. The island has seen successive settlements and periods of colonisation over the centuries. From the period of the sixteenth century to independence in 1948 Sri Lanka saw the arrival of first the Portuguese, then the Dutch, and finally the British. Each colonial power established different levels of rule, control, and influence over the island, but all shared an interest in the extraction of resources and in trade. In the end, disentangling what is traditional Sinhalese society and what has been derived from such a long colonial heritage is a difficult task. Dominion status was granted to Sri Lanka, then still Ceylon (the name was changed only in 1972), in 1948 under republican rule. The transfer of power went remarkably smoothly, particularly in contrast to the transition in other areas of the subcontinent. Sri Lanka in 1948 was, in contrast to India and Burma, 'an oasis of stability, peace and order'.<sup>6</sup> The road to independence followed a model of 'constitutional evolution'—a 'negotiated transfer of power, in contrast to the

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<sup>3</sup> Steven Kemper, *The Presence of the Past: Chronicles, Politics, and Culture in Sinhala Life* (Ithaca: Cornell University Press, 1991), p. 13.

<sup>4</sup> K.M. de Silva, *A History of Sri Lanka* (Colombo: Vijitha Yap Publications, 2005), p. 40.

<sup>5</sup> Caitrin Lynch, 'Juki Girls: Gender, Globalization, and the Stigma of Garment Factory Work', in John Clifford Holt (ed.), *The Sri Lanka Reader: History, Culture, Politics* (London: Duke University Press, 2011), p. 695.

<sup>6</sup> de Silva, *History*, p. 592.

Indian model’.<sup>7</sup> The disconnect between the hope for a well-ordered, democratic development post-independence, and the violence and erosion which ensued, is striking.

Though it is hard to generalise on such a fundamental issue as how a ‘political order’ is conceptualised by the elites, it is possible to give at least an indication of the tenor of the political ideal in the post-colonial era. The political order can be said to be based on the concept of *dharmista samajaya*—a ‘just society’, and this can be read as the Sri Lankan state’s ideology:

The state and its security forces see the ‘*dharmista* society’ as one in which social justice prevails, but one that can be achieved only through political stability. The ruler and his agents undertake to govern righteously, to provide for all citizens according to their merits and virtues, and to bring about material benefits for the ruled. In return, the ruled are expected to accept the status quo and to confine their dissent within the bounds of the political order.<sup>8</sup>

This is the predominant political order within which external actors must act. The tensions which are analysed in this study for the most part relate to an external agent struggling to understand and fit into this political order. But more to the point, an external humanitarian agent struggling to fit into this Sinhalese political order whilst working predominately in Tamil areas—within the zone of the, at best, ‘other’, and at worst, ‘enemy’. For MSF, as a humanitarian actor responding to the needs arising from the civil war, worked almost exclusively in Tamil areas. The civil war, its effects, and the political environment surrounding it, was the dominant theme for internal and external actors both and will be discussed in detail in the next section.

## 2.2. The Civil War

A pervasive theme in the post-independence period has been the tense and difficult relationship between the Sinhalese and Tamil populations. Tamil dissatisfaction over central policies concerning language usage, access to the civil service, and minority rights, first developed into a period of low-level violence in the 1970s between Tamil militant groups and governmental security services. This low-level conflict increasingly began to involve civilians and then transitioned into a full-fledged civil war beginning in the 1980s. Tamil ethnic identity had developed over time from the British period. The ‘enumeration’ of identities through ethnic labels first came about via the British through censuses, and ‘in that sense colonial knowledge did not imagine identities or construct them; rather, it opened up a new realm for political identities to blossom’.<sup>9</sup> These labels became the basis of

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<sup>7</sup> K.M. de Silva, *Reaping the Whirlwind: Ethnic Conflict, Ethnic Politics in Sri Lanka* (New Delhi: Penguin Books India, 1998), p. 5.

<sup>8</sup> Nira Wickramasinghe, *Sri Lanka in the Modern Age: A History of Contested Identities* (London: Hurst and Company, 2006), p. 246.

<sup>9</sup> Wickramasinghe, *Modern Age*, p. 44.

entitlements and rights as the British colonial administrators systematised the ethnic categories which were used particularly in assigning places in the administration and in deciding on representation in the Legislative Council.<sup>10</sup> As with many colonial contexts, it is uncertain how politically divisive ethnicity was before the British started to actively enforce the use of ethnic categories in the political process. Regardless, in the post-independence period ethnicity became a dominant political issue.

The Liberation Tigers of Tamil Eelam (LTTE), which became the leading militant Tamil group fighting for independence for Tamil areas, was established in 1976, though its leader, Prabhakaran, had already created the Tamil New Tigers group in 1972.<sup>11</sup> The beginning of the conflict proper is often thought to be the occasion of the 1983 anti-Tamil riots, which killed, in wide-ranging estimates, between 350-4,000. Tamils and displaced around one hundred thousand Tamils in Colombo and 175,000 outside the city.<sup>12</sup> The narrative runs as follows. A reported rampage by Sinhalese troops against Tamils in the north led to a retaliation by the LTTE which left 13 Sinhalese soldiers dead. Their bodies were taken to Colombo for viewing at a cemetery. Mishaps resulted in the ceremony starting late, the crowds which had gathered becoming agitated, and riots ensued. There have been many claims that the riots were pre-planned by the government.<sup>13</sup> This story is often told in detail, as it has become an important feature of the genesis of the actual conflict and foreshadowed the violent nature of ethnic relations for the next three decades.

This review will not go into the often fierce debates about the specific causes of the conflict, nor will it elaborate on what were indirect as opposed to direct causes. It can be summarised that religion, language, historic grievances, and tensions over territorial boundaries all acted in concert to create the basis for conflict.<sup>14</sup> In the Tamil view the policies instituted by Sinhalese politicians post-independence were largely biased towards their fellow Sinhalese. Examples given to support this view have been the Citizenship Act of 1948, which disenfranchised many Indian Origin Tamils (Tamils brought from India in the colonial period to work on the tea plantations), and the Sinhala Only Official Language Act of 1956, which gave preference to Sinhala over Tamil in official discourse. These examples, amongst others, are seen by many Tamils as contributing to the consolidation of a unitary state structure—a unitary Sinhalese dominated political structure, which

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<sup>10</sup> Wickramasinghe, *Modern Age*, p. 45.

<sup>11</sup> Frances Harrison, *Still Counting the Dead: Survivors of Sri Lanka's Hidden War* (London: Portobello Books, 2012), p. xix.

<sup>12</sup> Deborah Winslow and Michael D. Woost, 'Articulations of Economy and Ethnic Conflict in Sri Lanka', in Deborah Winslow and Michael D. Woost (eds.), *Economy, Culture, and Civil War in Sri Lanka* (Bloomington: Indiana University Press, 2004), p. 2.

<sup>13</sup> Winslow and Woost, 'Articulations', p. 2

<sup>14</sup> de Silva, *Reaping*, p. 16.

ignored the needs of the Tamil community. But in a commonly, though it should be stressed not universally held Sinhalese view, the island of Sri Lanka is 'the sacred home of the Sinhalese and Buddhism', and thus the often strong opposition to any power-sharing with Tamils.<sup>15</sup>

The rise of ethnic Sinhalese Buddhist nationalism in the early 1950s, ending in electoral victory of a sympathetic regime in 1956, was also an important development.<sup>16</sup> In this period the pluralistic system based on ethnic harmony and secularism was replaced by populist nationalism based on indigenous values and ethnic identity based on language and religion.<sup>17</sup> Bandaranaike, Prime Minister between 1956 and 1959, exploited the above attitudes. For the Sinhalese political elites Buddhism was 'a kind of pole star, a fundamental directional force', for not only politicians but Sinhala culture in general.<sup>18</sup> In the end it was the privileging of this nation-state over state-nation values that may have caused the most damage.<sup>19</sup> And the damage was substantial. The civil war ebbed and flowed from the early 1980s until 2009. And sadly, within this period and since the end of the war, the original Tamil grievances seem never to have been properly addressed.

The civil war itself is commonly broken down into five phases, but for the purposes of this discussion it will be broken down into a further two phases.<sup>20</sup> The period 1983-1987 is known as Eelam War I, and was bounded by the 1983 anti-Tamil riots and the signing of the 1987 Indo-Sri Lanka Accord which marked the arrival of the Indian Peace Keeping Force (IPKF) to the Tamil areas of Sri Lanka. Fighting between the IPKF and the LTTE intensified during the period of its occupation. Once the IPKF left Sri Lanka in 1990 fighting between the LTTE and the Sri Lankan military resumed and Eelam War II began. Peace talks were briefly held in 1995 but quickly failed and Eelam War III began the same year. The year 2002 brought yet another ceasefire which ushered in an uneasy and still violent period of 'peace'. The Indian Ocean tsunami hit the island on boxing day 2004, which created its own unique phase in the relations between the GoSL and the LTTE. The final phase of the conflict, Eelam War IV, commenced in 2006 and ended in defeat of the LTTE in May 2009. The period after the 2009 defeat can be termed the post-conflict phase. The early periods will be reviewed

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<sup>15</sup> A.R.M. Imtiyaz, 'Ethnic Conflict in Sri Lanka: The Dilemma of Building a Unitary State', in Manas Chatterji and B.M. Jain (eds.), *Conflict and Peace in South Asia* (Emerald Group Publishing, 2008), p. 126.

<sup>16</sup> Alfred Stepan, Juan J. Linz and Yogendra Yadav, *Crafting State-Nations: India and Other Multinational Democracies*, (Baltimore: Johns Hopkins University Press, 2011), pp. 149-161.

<sup>17</sup> de Silva, *Reaping*, p. 21.

<sup>18</sup> John Clifford Holt, 'A Buddha Now and Then: Images of a Sri Lankan Culture Hero', in John Clifford Holt (ed.), *The Sri Lanka Reader: History, Culture, Politics* (London: Duke University Press, 2011), p. 404.

<sup>19</sup> Stepan, et al., *Crafting*, pp. 149-161.

<sup>20</sup> Adapted from: Gordon Weiss, *The Cage: The Fight for Sri Lanka and the Last Days of the Tamil Tigers* (London: Vintage, 2011).

below whilst the 2006 and 2008-2009 periods will be dealt with in much more detail in subsequent chapters.

#### 2.2.1. Eelam War I: 1983-1987

This period begins with the 1983 anti-Tamil riots, discussed above, and ends with the arrival of the Indian Peace Keeping Forces (IPKF). The Indo-Sri Lanka Accord of 1987, signed by Rajiv Gandhi for India and Prime Minister Jayewardene for Sri Lanka, was meant to help end the war by addressing some of the most pressing political and linguistic issues, such as devolving more power to the provinces and making Sinhala, Tamil, and English all official languages. India deployed the Indian Peace Keeping Force (IPKF) to reinforce the ceasefire. India's involvement in the Sri Lankan conflict was based on a number of factors, including domestic political considerations related to sympathies between the Tamil political elites and general population of the Indian state of Tamil Nadu and the Tamils of Sri Lanka. To some it was the involvement of India at this time which caused the prolongation of the conflict as the Indian government in effect stopped the Sri Lankan military from defeating the LTTE at a crucial period in May 1987.<sup>21</sup> The Indian government had also been implicated in the training of Tamil militants in the late 1970s and early 1980s.<sup>22</sup> The intervention of India as the dominant regional power would not be the last time an external actor became enmeshed in the conflict.

#### 2.2.2. IPKF Presence: 1987-1990

The LTTE, desiring a break in the fighting to regroup, initially welcomed the Indian intervention, yet did not appreciate the presence of foreign troops in its operational areas. From the common Sinhalese perspective the presence of foreign troops was offensive to national pride, however the government was pre-occupied with fighting the JVP-led Marxist insurgency in the south of the country and so welcomed the IPKF from this perspective. The IPKF and the LTTE fell-out after a period of mutual support and intense fighting began between the LTTE and the IPKF. The IPKF pulled-out in 1990 leaving many dead and their involvement widely considered a failure.<sup>23</sup> Rajiv Gandhi personally paid a heavy price with his assassination by the LTTE in May 1991. Never again would India become so involved with the Sri Lanka war.

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<sup>21</sup> K.M. de Silva, *Sri Lanka and the Defeat of the LTTE* (London: Penguin Books, 2012), pp. 1-2.

<sup>22</sup> M.R. Narayan Swamy, *The Tigers Vanquished: LTTEs Story* (New Delhi: Sage, 2010).

<sup>23</sup> Wickramasinghe, *Modern Age*, p. 292.



### 2.2.3. Eelam War II: 1990-1995

After the IPKF withdrew in March 1990 peace talks were again attempted but by June the talks broke down and violence re-commenced. After another five years of conflict, in December 1994 President Chandrika Kumaratunga and the LTTE agreed again to talks. Kumaratunga had been elected on a peace platform. A ceasefire was declared in January 1995. The rise in intensity of the conflict over these periods should be noted. One result was an increasing militarisation of Sinhalese society. In the 1970s the defence budget was below 0.5% of GDP; 1% in the early 1980s; by 1985 it was 3.5%; and by 1996 it had risen to 6%. Between 1985 and 1996 the armed forces grew from 58,660 to 235,000 active personnel.<sup>24</sup> The war also increasingly dominated the political arena.

### 2.2.4. Eelam War III: 1995-2002

Peace talks broke down by April 1995 and the LTTE recommenced hostilities. Violence continued until February 2002 when the LTTE and government signed a new ceasefire, mediated by the Norwegian government. This ceasefire came after a major LTTE attack on the Katunayake International Airport (Colombo) in July 2001, which had severe effects on the tourism industry. The end of this period will be covered in more detail in later chapters.

### 2.2.5. 'Peace': 2002-2006

Peace talks failed by April 2003 but the ceasefire held. The Indian Ocean tsunami hit Sri Lanka on boxing day 2004. More than 30,000 people were killed.<sup>25</sup> The ceasefire in practice broke down after a series of attacks by the LTTE in 2006 and the election of Mahinda Rajapaksa. This is the context of chapters three to five and will be covered in much more detail in those chapters.

### 2.2.6. Eelam War IV: 2006-2009

In coming into power the Rajapaksa regime took an increasingly hard line on the LTTE and the conflict re-started in 2006, though the government didn't formally pull out of the 2002 ceasefire until January 2008. The end of the war came with the final defeat of the LTTE in May 2009. The post-conflict period starts at this point. This period is covered in detail in chapter six.

The civil war ebbed and flowed and was not continuous in intensity. Different governments and personalities on the GoSL side approached the war and the various peace processes from different

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<sup>24</sup> Wickramasinghe, *Modern Age*, p. 316.

<sup>25</sup> Harrison, *Counting the Dead*, p. xx.

perspectives. The limits of the acceptability within the Sinhalese political community of power-sharing were tested time and again as various ideas were floated. It is outside the scope of this study to delve into the details of the political manoeuvrings of the earlier periods of the war but Part II will analyse the most important political aspects of the latter phases of the conflict. Suffice it to say that, whilst the LTTE side of the equation remained fairly constant, e.g., prosecute the war to gain an independent Tamil homeland, the GoSL's approach was much more in flux.

As the focus of this study is not the war itself but the relationship between the GoSL and MSF-H against the background of the civil conflict, it is now important to turn from a discussion of the how the conflict developed to how the GoSL's approach to NGOs changed over time.

### 2.3. NGO Legislation in Sri Lanka Over Time

Every NGO working in Sri Lanka, whether national or international, must register with the government and follow certain administrative procedures to remain in good legal standing.<sup>26</sup> This is the case in every country in which NGOs work. Though NGOs are non-governmental—part of civil society, and non-profit—they are still considered to be legal entities. For reasons of taxation, monitoring of funding collection and distribution, and overall vetting of criminal intent, civil society institutions must be registered with a specified governmental agency. At times religious NGOs may also have separate and unique registration requirements. As was discussed in the last chapter some governments may also have other intentions and motivations, formally or informally stated, for regulating NGOs. This is one of the main challenges for NGOs—to be aware of both the legal and the extra-legal rationales for NGO regulations. The extra-legal reasons may be connected to political, economic, social, religious, or even military concerns.

The choices of administrative categories under which to be registered in Sri Lanka include:<sup>27</sup> The Societies Ordinance of 1891; the Companies Act 2007 (not relevant for the 2006 period under study but applicable to the 2009 period); the Cooperative Societies Act of 1992; the Voluntary Social Service Organisations Act of 1980; or the legal incorporation by an act of parliament sponsored by a member of parliament through the mechanism of a private members bill. Over the years various amendments have been enforced. The Voluntary Social Service Organisations (Amendment) Bill 1998 stipulated that if a board of inquiry, which had been appointed by a minister, had reported that

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<sup>26</sup> As will be seen throughout the Sri Lanka case study, the GoSL rarely made a clear distinction between local and international NGOs. This complicated the work of INGOs in adhering to regulations.

<sup>27</sup> Adapted from: Rohan Edrisinha, 'Special Section: Restrictions on Foreign Funding of Civil Society, Sri Lanka', *The International Journal of Not-for-Profit Law*, 12:3, May (2010). [It should be noted that this issue of the journal was funded by the United States Agency for International Development, the US Government's aid agency.]

‘there is evidence to support an allegation of fraud or misappropriation against a voluntary association’, the minister could in effect take over the management of the NGO. The Registration and Supervisory Requirements regulations of October 1999 instituted various new requirements with respect to financial management and administration of NGOs. Following the 2004 tsunami various additional regulations were introduced as a prerequisite for registration with the NGO Secretariat. This will be discussed in more detail in the next chapter. The appropriations bill for 2005 introduced a tax on foreign funding received by certain types of NGOs. It is not relevant here to discuss the similarities and differences between these various methods of registration, but it is important to note that the choice of registration mechanism was not always straight forward and that the regulations themselves were often complex.

The International Center for Not-for-Profit Law (ICNPL) has identified four themes or events which particularly influenced the government in approaching NGO legislation: Authoritarianism; the 2004 tsunami; the ‘insecurities of the majority community’; and the presidential elections of 2005.<sup>28</sup> Based on the ICNPL analysis the following section will sketch out these themes and events.

Without entering here into the debate about the causes of (or indeed fact of) a rise in authoritarianism in Sri Lanka, a number of events linked together have indicated an authoritarian trend to some observers. These include the passing of the constitution in 1972, which began a process of political centralisation; the crushing of the Sinhalese Marxist JVP insurgency in the south which preceded this move; and the establishment of the executive presidency in 1978.<sup>29</sup> Connected to this process, in the 1990s ‘authoritarian political regimes’ began to ‘intimidate and harass prominent NGOs that were perceived to pose threats to incumbent Presidents and regimes’.<sup>30</sup> And in fact, the first case of serious NGO – GoSL tensions occurred in 1990 when President Premadasa appointed a presidential commission with the mandate to investigate NGOs. The NGO Commission of Inquiry was established in December 1990 to respond to accusations that some NGOs were ‘using their funds to the detriment of the country, especially its ethnic, religious and cultural harmony’.<sup>31</sup> To carry out its investigation, the commission circulated a questionnaire which requested a great deal of information from NGOs working in the country. Some NGOs were sent an additional questionnaire requesting more information on their finances.<sup>32</sup> The local NGO Sarvodaya, the largest in Sri Lanka, was

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<sup>28</sup> Edrisinha, ‘Restrictions’.

<sup>29</sup> For a discussion of this theme see: de Silva, *History*, pp. 665, 668, 671, and 684.

<sup>30</sup> Edrisinha, ‘Restrictions’, p. 1.

<sup>31</sup> Susantha Goonatillake, *Recolonisation: Foreign Funded NGOs in Sri Lanka* (New Delhi: Sage, 2006), p. 61.

<sup>32</sup> Human Rights Watch, *Human Rights Watch World Report 1992*: <http://www.hrw.org/reports/1992/WR92/ASW-14.htm> [last accessed 25 March 2015].

especially under fire, and as such an alternative explanation of Premadasa's motivation was a concern over the aspirations of its popular leader, A. T. Ariyaratne.<sup>33</sup> Serious formal allegations were made against the organisation, including that it implemented activities 'prejudicial to national security and public order'<sup>34</sup> although it was 'brought back into the mainstream' in the change of regime after the assassination of Premadasa by the LTTE.<sup>35</sup> Thus, on this view, an NGO and its leader was considered a threat to the political order.

There is little evidence of any long-lasting effects of this initiative from the 1990s. The next period of major accusations against NGOs commenced in 2005. At this time various initiatives to investigate NGOs which were engaged in human rights and conflict resolution-related activities were begun.<sup>36</sup> As will be discussed in detail in chapters three and four, the influx of international aid agencies and the foreign funding of local NGOs raised concerns in the government about the potential negative impact on the Sri Lankan polity. In summary:

While some of these concerns were legitimate and raised valid questions as to the effective and responsible management of resources, the political groups that were hostile to NGOs for ideological reasons and reasons of self-interest exploited many of these apprehensions to further their ongoing concern to restrict the freedom of association of NGOs.<sup>37</sup>

The war was also a facilitating factor in the rising tensions with NGOs. Between 2000 and 2006 peace negotiations were being held with international facilitation. This 'internationalisation' of the conflict was a sensitive issue with the majority Sinhalese Buddhist public. NGOs, particularly those involved with the peace process, were increasingly seen as 'agents of Western countries and entities that had their own political and ideological agendas that were viewed as hostile to indigenous values and the interests of the majority community'.<sup>38</sup> Reversing KM de Silva's oft quoted observation that the Tamils were a minority with a majority complex, it can be said from the Sinhalese perspective that they were a majority with a minority complex. Although the Sinhalese were a majority in Sri Lanka and the Tamils a minority, regionally the case was reversed, as the Tamil population in the Indian state of Tamil Nadu is approximately three times as large as the population of Sri Lanka as a whole. This was one of the major issues the Sinhalese population had had with any involvement by

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<sup>33</sup> Goonatilake, *Recolonisation*, p. 67.

<sup>34</sup> Goonatilake, *Recolonisation*, p. 66.

<sup>35</sup> Goonatilake, *Recolonisation*, p. 67.

<sup>36</sup> Edrisinha, 'Restrictions', p. 2.

<sup>37</sup> Ibid

<sup>38</sup> Ibid

India in Sri Lankan affairs. Foreign involvement with the conflict was widely considered to be undesirable interference into the domestic affairs of the country.

With the election of Mahinda Rajapaksa as President in November 2005 the government's policies related to the war, the LTTE, and the involvement of the international community began to change yet again. The increased influence in this period of the Janatha Vimukthi Peramuna (JVP) and the Jathika Hela Urumaya (JHU), two Sinhalese nationalist parties (the JHU being comprised of Buddhist monks), added a religious element to the nationalist and ethnic themes discussed earlier. And as a result of the tsunami in 2004 a Select Committee of Parliament to Investigate NGOs (PSC) was appointed in early 2006 at the instigation of the JVP and JHU. The JVP, the JHU, and the PSC will be discussed in much detail the next three chapters. There was serious political and cultural dissatisfaction in this period about the role of the Norwegian government in the peace process, and they were routinely accused of being biased towards the LTTE. As will be seen as 2006 progressed the war effort intensified, and as it did the anti-NGO sentiments built on the previous periods became more pronounced. To summarise the transition:

NGOs that had been at the forefront of campaigns for constitutional reform, conflict resolution through negotiation and political accommodation, media freedom, and human rights, by and large, worked closely with the Kumaratunga Administrations from 1994 to 2005. Though there were strains at various times, there was mutual self-interest and a similarity of broad goals on the part of government and such NGOs. The election of the Rajapaksa Administration, with the presence of the two small ultra-nationalist parties, created a sharp divide between the government and [NGOs].<sup>39</sup>

One point to emphasise at this juncture is the above mentioned chronic confusion between types of NGOs. Often anti-NGO rhetoric and criticism did not differentiate between truly grassroots NGOs, national NGOs (NNGOs) which were predominately foreign-funded, and INGOs. Put together they formed the nebulous 'NGOs' which were so disliked in many nationalist Sinhalese Buddhist circles. On the other side of the equation, INGOs had their issues with states in general and with the GoSL specifically. The next sections will discuss the view of MSF-H's view on these themes.

### **III. Médecins Sans Frontières**

#### **3.1. Médecins Sans Frontières: Introduction**

It is important to first establish the type of organisation MSF represents. MSF considers itself to be a voluntary organisation. Following Weber, a voluntary organisation can be described as 'an

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<sup>39</sup> Edrisinha, 'Restrictions', p. 3.

organised association with an established set of regulations which claim validity only for those who have entered into membership of the association through personal choice'.<sup>40</sup> Though most in MSF would agree that membership is voluntary—the voluntary nature of the organisation is clearly stated in its charter, it is less clear whether the rules and regulations that MSF purports to abide by are a) considered by MSF to be only applicable to MSF, and b) whether these same rules and regulations are considered by others to be also applicable to themselves. In many ways this is the fundamental question underlying the tensions between governmental and non-governmental actors, for as Weber continues: 'the regulations of a voluntary association may touch on the interests of third parties, and in that case the latter may then be forced to recognise the validity of these regulations both by the usurpation and arbitrary action of the voluntary association itself and by the provisions of the law (e.g., company law)'.<sup>41</sup> Mutual (dis)respect, overlapping authority, acceptance or rejection of the principles and actions of others, and the legal underpinnings of all of these aspects, are all important themes in the state—INGO relationship.

Médecins Sans Frontières is a humanitarian international medical non-governmental organisation founded in Paris in 1971 by a group of French doctors and journalists.<sup>42</sup> To a large degree MSF invented and defined the parameters of modern emergency relief, especially in the medical realm. MSF has a dual mandate—medical humanitarian operations and advocacy. Specifically, it will be the Dutch 'section' (nationally identified office) of MSF which will be under the lens, though as MSF is a movement the actions and decisions of each individual section is tied to those of the other sections.

MSF describes itself in this way:

Médecins Sans Frontières (MSF) is an international, independent, medical humanitarian organisation that delivers emergency aid to people affected by armed conflict, epidemics, natural disasters and exclusion from healthcare. MSF offers assistance to people based on need, irrespective of race, religion, gender or political affiliation. Our actions are guided by medical ethics and the principles of independence and impartiality. It is a non-profit, self-governed organisation.

Principles play a large role in the identity of humanitarian organisations. For MSF the principles are outlined in the following way:

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<sup>40</sup> W.G. Runciman (ed.), *Weber: Selections in Translation* (Cambridge: Cambridge University Press, 1978), p. 37.

<sup>41</sup> Runciman, *Weber*, p. 38.

<sup>42</sup> All of the following information on MSF can be found at: [www.msf.org](http://www.msf.org) [last accessed 20 March 2015].

Independence: Our decision to offer assistance in any country or crisis is based on an independent assessment of people's needs.

Impartiality and neutrality: MSF offers assistance to people based on need and irrespective of race, religion, gender or political affiliation. We give priority to those in the most serious and immediate danger. Our decisions are not based on political, economic or religious interests. MSF does not take sides or intervene according to the demands of governments or warring parties.

Advocacy, or 'bearing witness', is also an essential component to the organisation's identity. To MSF the principles of impartiality and neutrality are not synonymous with silence. 'When MSF witnesses extreme acts of violence against individuals or groups, the organisation may speak out publicly. We may seek to bring attention to extreme need and unacceptable suffering: when access to lifesaving medical care is hindered, when medical facilities come under threat, when crises are neglected, or when the provision of aid is inadequate or abused'. The organisation's dual mandate and the importance of witnessing and advocacy activities are integral to the organisation's identity.

Two other key elements in the way MSF defines itself are a commitment to upholding medical ethics and a pledge of accountability for its actions to its patients and donors.

MSF-Holland was begun in 1984, and was the third section after MSF-France (1971) and MSF-Belgium (1980).<sup>43</sup> Later MSF-Spain and MSF-Switzerland became the final two of the five 'operational sections' of the organisation.

### 3.2. Médecins Sans Frontières and Strong States—Major Issues<sup>44</sup>

MSF-H, being concerned with the issue of state control over humanitarian action, investigated the theme in 2010 which led, through a series of case studies, to a report entitled 'A line in the sand: states' restrictions on humanitarian space'.<sup>45</sup> The case studies related to the experiences of MSF-H in the Ogaden region of Ethiopia, Sri Lanka, and Turkmenistan.

In summary, when considering the organisation's experience in working under repressive regimes, it was thought that, 'although other motives may play a part in some instances (e.g. the resentment of having to rely on foreign charity), the main reason for restricting MSF's space is that governments

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<sup>43</sup> Information on MSF-Holland can be found at: [www.artsenzondergrenzen.nl/over-ons/geschiedenis.aspx](http://www.artsenzondergrenzen.nl/over-ons/geschiedenis.aspx) [last accessed 20 March 2015].

<sup>44</sup> The background context for this section is based on a close reading of a wide range of internal MSF-H documents on the theme, interviews with MSF-H officials, and personal knowledge and participation in MSF-H internal discussions on the theme.

<sup>45</sup> Humanitarian Affairs Department (HAD), 'A Line in the Sand: States' Restrictions on Humanitarian Space', HAD Working Papers, MSF-Holland, 2010.

perceive the organization as a threat'.<sup>46</sup> Where an armed conflict existed such regimes feared that agencies such as MSF would provide support to opposition forces, either with the provision of medical services or by extending credibility through interacting with them. But to MSF the most important reason the organisation was thought to be dangerous was because such governments had something to hide and feared that the 'something' which was meant to be kept hidden would be exposed by international agencies and they were therefore threatening to the regime's authority or to its political objectives. What was it which states would want to go unrevealed? It could be violations of International Humanitarian Law, or International Human Rights Law, or 'simply the lack of capacity to adequately respond to a disease outbreak'.<sup>47</sup> The latter was of most concern to a medical agency and often was associated with fears by governments of negative publicity concerning their inadequate response capacity. In MSF's view, a correlation could be made between the 'perceived importance of information control' and the level of authoritarianism exhibited by a government. The more authoritarian, the more important was the control of information to such governments, as well as the increased tendency to deny populations political and civil rights. To summarise, to MSF the logic was clear: The more authoritarian and repressive a regime, the more it had to hide, and thus the more threatening were organisations 'as free-minded and outspoken as MSF'. The issue of MSF's 'public voice' will be discussed in more detail below.

The principle of neutrality also factored into the discussion of why humanitarian agencies were sometimes considered a threat. In the MSF perspective, 'when the control of information is a tool in the government's strategy to consolidate its power, any information not in support of the government quickly becomes anti-government, and therefore a potential threat'. Whether an actual threat—in the sense of being a challenge which was meant to cause harm—existed or not was thought to be irrelevant to the government concerned, as the very fact of the expression of a contrary view, however benignly stated, was itself considered to be a threat. And as such neutral space in such contexts was at a premium. This point should be emphasised in relation to MSF. Given MSF's dual mandate and the fact that it was 'a big and credible global player' which had the ear of Western diplomats, in at least MSF's mind authoritarian regimes would be fearful of its presence. It was thought that these facts played against the agency being given access. This question will be explored in-depth to test whether this was true in the Sri Lanka context.

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<sup>46</sup> HAD, 'Line in Sand', p. 50.

<sup>47</sup> Ibid



Maintaining impartiality was also a major concern for MSF when operating in authoritarian states. It will be remembered that the humanitarian principle of impartiality refers to providing assistance to those most in need regardless of their ethnicity, race, creed, political persuasion, or any other such characterisation. It was thought that states were liable to manipulate humanitarian action which would disallow the provision of aid in an impartial manner by humanitarian organisations, as states would be fundamentally biased towards, or against, certain groups within society and would desire that agencies work with those positively viewed and not work with undesirable segments of the population. The latter would commonly be those whom humanitarian organisations would most want to assist. Disturbingly to MSF such manipulation could create a situation where the agency's work could potentially cause harm to the population which was meant to be served by being associated with an external agent. Avoiding these situations was a challenge when working with authoritarian regimes.

Many of the key findings concerning MSF's relationship to authoritarian regimes related to the role played by the organisation's 'public voice'. To an organisation which had a dual mandate of medical action and witnessing, the (in)ability of speaking out was an important factor in any decision-making concerning negotiating access. The organisation's public voice was also a mark of its identity. The use and restrictions on its public voice was commented upon in relation to the manipulation theme. It was thought that MSF may have underestimated the 'leverage' of its public voice in terms of negotiating access. The sense here was that the threat of speaking out could assist with negotiations. But on the other hand, gaining access at the cost of speaking out also risked MSF being manipulated by authoritarian regimes (as MSF's leverage would have been lost) and, even more seriously, being made complicit in the activities which the organisation witnessed but could not speak out about. The fear of complicity was strong. Self-censorship was also a risk, as in certain circumstances, dictated by the behaviour of the government, MSF refrained from exposing the 'something' which was meant to remain hidden, either by remaining silent, or by avoiding the sensitive subjects in its public communications. Not speaking-out often carried as strong a message as speaking out.

But given the above analysis, why was MSF tolerated at all? Why would an authoritarian state allow any humanitarian international agency to work on its territory and interact with its population, let alone one with a reputation of speaking-out? There were a number of explanations according to the MSF case study research. For states which had slowly drifted into authoritarianism the fact that MSF had been in the country for a substantial period of time could be a factor, especially if credit and leverage with certain authorities, such as technical ministries or local authorities, had been banked. In such situations there would be costs incurred, in terms of international standing and image, by the

expulsion of the agency. If these outweighed any negative consequences concerning its continued presence, especially if control was tightened, then it was more rational to allow the agency to continue to work. On the other hand, the presence of an international agency, if well managed, could actually be used by the regime to gain credibility and legitimacy. In such situations agencies could also provide useful services, filling gaps the government was unable, or unwilling, to fill. Or, as MSF conceded, it was possible that the regime, though authoritarian, was ‘genuinely concerned about the welfare of its population’ and welcomed humanitarian assistance. But in most cases it was certainly a combination of these reasons.

Intriguingly, the last overall finding of the MSF research related to MSF’s ‘long-identified internal weaknesses’ which limited its ability to respond to the above-outlined challenges. These involved the organisation’s poor performance in understanding the contexts within which it worked and its inadequate ‘networking’ with key local and international actors. These weaknesses had resulted in decreased access and increased manipulation (as described above), and were considered by some to be so serious as to preclude work in authoritarian regimes until rectified. This point will be revisited as part of the analysis of MSF-H’s approach to the restrictions put into place by the GoSL in 2006 and 2008-2009.

### 3.3. Médecins Sans Frontières in Sri Lanka

This section reviews the history of MSF in Sri Lanka and will provide an overview of the common themes associated with its relationship with the GoSL. MSF had a long history in Sri Lanka and encountered many constraints over time. MSF-H’s relationship with the Sri Lankan government was never easy, although tensions ebbed and flowed as with any relationship. In order to understand the behaviour of MSF-H in 2006 and 2008-2009 it must be understood how the organisation’s history in Sri Lanka had informed its approach to the GoSL.

#### 3.3.1. History:<sup>48</sup>

MSF began working in Sri Lanka in 1987 when MSF-France established its first operational presence, based on a Memorandum of Understanding (MoU) signed with the Government in 1986 (and which was amended in 1991). MSF-Holland first arrived in-country in 1994, though contact had been maintained with MSF-France from the late 1980s concerning whether there existed operational space for another MSF section. At this time MSF-F handed over their surgical

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<sup>48</sup> This review is compiled from MSF-H programme documents as detailed in the methodology section of the introduction.

programme on Mannar Island to MSF-H. MSF-F continued to implement surgical and mobile clinic programmes in Batticaloa, Jaffna and Vavuniya. The MSF-H Vanni<sup>49</sup> programme comprised obstetric care and gynaecological services as well as *ad hoc* emergency surgery at the Kilinochchi district hospital. Kilinochchi town was re-taken by the Sri Lankan Army (SLA) in July 1996 which resulted in displacement of much of the population served by the MSF programme, and as such the hospital equipment was removed and re-allocated to the Mallavi peripheral unit, where the project was re-established and remained from January through December 1997. During 1997 paediatric care activities were added to the programme at Mallavi hospital.

The surgical ward in Mallavi hospital was constructed of wood, palm roofing, and UNHCR plastic sheeting as cement was a prohibited item in the Vanni. As would be the case throughout MSF's time in the Vanni, there was a lack of medicines and surgical materials and equipment in the project site as there were strict restrictions on the 'importation' of supplies across the front lines. The Medical Board of the Ministry of Defence (MoD) decided what medicines, materials, and medical equipment were allowed and in what quantities. In August 1997 MSF-H was forced to stop non-emergency surgery because of the inadequate supply of medicines and materials to the project. The supply situation improved by the end of 1997 and MSF-H could resume the provision of non-emergency procedures. As well as the issue of supplying the programmes, the transfer of referral patients across the front lines to Vavuniya was problematic, as men between the ages of 16 and 35 were not allowed across the front lines at this time. And as adults were unable to travel with their caretakers, hospitalisation for the elderly was impossible in Vavuniya.

A report from a visit in late 1997 by an operational director from the Amsterdam headquarters discussed MSF-H presence during this period.<sup>50</sup> From the MSF-Holland perspective the organisation was implementing two programmes, one on each side of the front lines (the project site on the 'government' side of the line was the Vavuniya logistical base), but this was not the view of Sri Lanka's. The report admitted that from an external perception MSF as a whole was seen as a Tamil organisation as in actual fact all of MSF's programmes, whether thought to be so by MSF or not, were considered by the Sinhalese population and GoSL to be situated in 'Tamil Country'. Even though MSF tried to explain to the general population that it was an impartial organisation working in Batticaloa, Jaffna, Vavuniya, and Mannar, the average Sinhalese would not be aware of where the actual front lines stood at any given point in time and would, in being presented with the list of locations, hear 'TAMIL, TAMIL,

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<sup>49</sup> The term 'Vanni' refers to the mainland portion of the northern, mainly Tamil, area of the Sri Lanka, as opposed to the Jaffna Peninsula.

<sup>50</sup> Operational Director's Trip Report, November 1997.

TAMIL and TAMIL TOWN’ [capitals in original], and would be left with an ‘impression of seeming partiality’. In addition, this perceived Tamil bias was reinforced by the fact that MSF hired, even in Colombo, 80 percent of its staff from the Tamil community. The interesting point of this discussion was that it had to take place at all, in that the organisation needed to be reminded of how it was being perceived and of the disconnect between the Sinhalese public’s perception and its own.

In 1998 MSF-H began a malaria programme in Puthukkudiyiruppu (PTK) and handed over its surgical programme on Mannar Island to the INGO Memisa (a Dutch Catholic INGO now part of the INGO Cordaid), as MSF-H considered the programme to be more development-orientated than emergency-focussed and thus better in the hands of a development organisation with a longer-term perspective. At this time MSF-F closed its surgical programme in the Vavuniya hospital. The PTK malaria programme in 1999 faced a difficult time with non-cooperative local health authorities. The MoD procedures for the transporting of supplies changed again in 1999. MSF and the ICRC were both accused by the security services of supplying the LTTE with medical items and with treating LTTE cadres. No MSF supplies were permitted across the front lines for much of the year, forcing MSF to conserve medical materials for emergency cases. In 1999, based on the developments in the conflict and the changing front lines, MSF-F re-located its hospital and mobile clinic programme from Madhu to Murunkan, re-opened its surgical programme in Vavuniya, and then finally re-opened its hospital and mobile clinic programme in Madhu.

Only in July 2000 did MSF-Holland become officially registered in Sri Lanka under the Ministry of Health and Social Welfare as a separate INGO. In 2000 the operational changes continued as MSF-F re-opened its surgical programme in Point Pedro and closed its mobile clinic and hospital programme in Murunkan at the end of the year. MSF-H opened a mental health programme in Vavuniya which focused on counselling the displaced and resident population. As can be seen programme decisions were as fluid as the situation dictated, as programmes were linked directly to the needs of the conflict-affected populations. Restrictions applied to humanitarian medical aid provided by MSF and the ICRC increased in 2001. MSF reported that the provision of humanitarian assistance by INGOs and UN agencies could rarely be maintained at adequate levels.

In late 2001 the MSF-H General Director visited the Sri Lankan mission and questioned MSF-H’s continued presence in the country. A number of considerations were put on the table, including: There were few humanitarian international organisations working in Sri Lanka and fewer still in the Vanni; economic and development policy was taking priority over humanitarian issues (related to the conflict), and as such there was a low level of engagement with humanitarian needs. In addition,

the UN and the donors were providing ‘weak leadership’ on humanitarian issues and were in fact letting the government dictate policy and control the coordination of international actors, an unacceptable situation in the view of MSF. For INGOs attempting to work in the Vanni the Sri Lankan Army still tightly controlled the movements of personnel and supplies. For MSF-H specifically, the organisation was substituting for the GoSL in the Vanni and this was a critical gap to be filled. Thus, in the end, it was concluded that MSF-H still needed to be present in Sri Lanka.

MSF-H in 2002 opened a new obstetrical/gynaecological programme in the PTK hospital. A process of decreasing specialist programming in the Mallavi hospital was begun, with focus restricted to obstetrical/gynaecological and emergency surgical services. This was a result of the population movement from the Mallavi area. The psycho-social programme was extended to provide counselling to new IDPs in relocation sites in Vavuniya district. MSF-F closed its surgical programme in Vavuniya in 2002 due to lack of conflict-related civilian casualties. Its Madhu hospital programme was scaled-down and focus was placed on mobile clinic services to ‘un-cleared’ (LTTE controlled) areas of Mannar district, also due to the movements of the population. Otherwise its programmes in Batticaloa, Jaffna, and Point Pedro continued.

By 2003 the situation was considered to have changed positively as procedures to cross the front lines had been simplified and it was now possible to cross the front lines seven days a week and 24 hours a day for transferring emergency referrals. Road-construction along the Vavuniya to Jaffna road was on-going and there was a large flow of people and goods travelling between Vavuniya and Jaffna. The MoH had restarted the supply of drugs and medical materials to the health facilities in the Vanni. An operational director from Amsterdam visited the mission in early 2003 and made a number of observations on MSF’s role in the country.<sup>51</sup> As a general rule MSF was said to always seek to use its medical interventions to provoke those with political responsibility to respond to the suffering of the population in crisis. It was again admitted that the Sri Lankan government, ‘uniquely in modern warfare’, had for years supported the social services provided in the LTTE held areas. Salaries for medical and social service staff were paid, food was distributed, and medicines supplied. Regardless, it was thought to be very important that MSF should endeavour to avoid the coordination and control mechanisms to which other INGOs had been tied.

A reading of the internal MSF-H documentation from this time shows that there was much discussion in this period about how long MSF-H should stay in such a context. The 2002 peace agreement was,

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<sup>51</sup> Operational Director’s Trip Report, 2003.

for the most part, holding, the active conflict had subsided, and it appeared that the Vanni was opening-up. The GoSL was also increasingly involved in service delivery as described above. In 2004 MSF-France made a decision to close its Sri Lanka mission after 16 years of continuous operations. At this time the ICRC also closed all of its health-activities in the eastern districts (Batticaloa and Ampara). Discussions within MSF-H led to a consensus that phasing out operations in 2004 was appropriate under the prevailing conditions. The ongoing peace-process had led to the emptying of IDP-camps around Vavuniya, had enabled the free movement for patients to other health-facilities such as Jaffna and Vavuniya, and had created the possibility for the MoH and WHO to access more areas of the Vanni. Therefore there was no longer a justification for MSF presence and the mission was closed in early 2004. MSF services in Vavuniya were taken over by the national staff.

A historical review of the various MSF interventions gives a sense for the types of programmes implemented, the challenges faced concerning access, and the rationale for presence. In summary, MSF-H first entered Sri Lanka in 1995. The engagement was strictly related to the conflict and operations were conducted solely in the north in conflict-affected Tamil areas. Access initially was not a major issue (although never easy). The organisation left in 2004 because the peace seemed to be holding and the humanitarian needs had lessened. In 2005 there was a brief post-tsunami intervention. The final period of MSF-H engagement was between 2006-2012. This last period can be broken down into three periods—2006-2008, when adequate access was still possible; 2008-2009, when access was increasingly difficult and then non-existent; and the 2009-2012 post-conflict period when MSF-H decided to close the mission. The first two of these final periods will be covered in the next chapters in fine detail as these are the periods under study. The next step here is to gain better insight into the major themes resulting from this historical analysis.

### 3.3.2. The Evolving Relationship with the Government of Sri Lanka: Major Themes

From the preceding discussion of both the GoSL's and MSF-H's viewpoints concerning the relationship between states and INGOs against the backdrop of civil conflict, an initial set of themes can be proposed, the examination of which will carry over into the analysis of the 2006 and 2008-2009 periods. These themes all relate to the process of negotiating access and will be considered in relation to the negotiation structure as already introduced. A state, when confronted with civil conflict—a state of exception, uses its prerogative to make decisions regarding access to external agents. On their part, INGOs will often desire to work in these very contexts exactly because of the behaviour of states and the impact of conflict on its population. From these various perspectives the

two actors must negotiate the parameters of their relationship, which centres around the issue of access—establishing it or constraining it. The variables upon which the two actors make such decisions on access is a core element of the research question. To assist in setting the background against which to answer this question the next section will summarise and discuss the themes of administration, politics, identity, the conflict, and relevancy which have been derived from the above historical review and will set the stage for the in-depth examination into the 2006 and 2008-2009 periods.

### 3.3.3. Administration in Sri Lanka

As mentioned above, NGOs of all types must be registered and follow various administrative procedures wherever they work and Sri Lanka is no exception to this rule. Administrative and bureaucratic challenges were a dominant theme not only for the INGOs themselves but for the governmental agencies which were responsible for administering and holding INGOs accountable through policy formulation and monitoring. On the side of INGOs their level of access to a large extent was defined by the amount of bureaucratic constraints which were in place related to their implementation of operations. The list of possible constraints and restrictions was long. These included issues with visas, MoUs, transport of supplies across the front lines, and restrictions placed on INGO access to conflict areas by the Ministry of Defence (MoD). These will be discussed in more detail below and will feature prominently in the subsequent analysis of the 2006 and 2008-2009 periods.

As a rule MoUs were negotiated and signed between relevant technical ministries and INGOs and were essential to the operational presence of an INGO. These would go into detail about what sort of programmes the INGO wanted to implement and where, and would also outline the administrative requirements connected to such operations. Regardless of the ‘without borders’ ideal of the organisation it was never possible for MSF to work in Sri Lanka, especially in Tamil areas, without the cooperation of the GoSL. One reason for this was obviously that Sri Lanka is an island and therefore it was not possible for MSF to implement illicit cross-border operations as it has done in certain circumstances elsewhere, e.g., Afghanistan in the 1980s and the Nuba Mountains region of Sudan in the 1990s.<sup>52</sup> The government, via the MoD, tightly controlled access to the areas in which MSF desired to operate and access was only given based on MoUs. In MSF’s case MoUs were negotiated with the Ministry of Health (MoH). But even with an MoU access could not be assured

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<sup>52</sup> Personal communication, former Head of Mission for Sri Lanka, MSF-Holland, 2014.

and could be limited by the authorities. There were a number of ways in which this happened but often access was limited through the restriction of visa issuance and through hampering the supply of essential programme materials across the front lines, as was witnessed in the historical review. The typical counter-tactic by MSF was ‘continuous lobbying’ with the relevant authorities.

MSF-H documentation often discussed the delay, suspension, or cancellation of visas. Visas were a major issue as MSF-H depended on a continuously available supply of specialised international staff. Details from a letter from MSF-H to the Minister of Defence from December 2001 regarding the visa situation helps illustrate the problems MSF-H experienced concerning visas.<sup>53</sup> The letter states that around 80 ‘specialised medical personnel (mainly surgeons, anaesthetists, obstetricians-gynaecologists)’ were deployed by MSF-H to Sri Lanka every year. Their contracts varied from one to six months. But MSF-H had been informed by the immigration authorities that the procedures it had been following to procure resident visas for its international staff was not correct. The organisation promised that it would comply in the future with the actual procedures, yet, the organisation had six international staff already in the country which had arrived before the organisation was aware of the proper procedures to be followed. MSF-H assured the minister that ‘it is our organisation’s concern to abide by the Sri Lankan laws’ and that it worked ‘in close co-operation’ with the MoD and the MoH. MSF-H understood and appreciated the government’s security concerns, but it did ask MoD assistance in normalising the status of the six international staff already in-country.<sup>54</sup>

A number of observations can be made concerning this letter. It is interesting to note first that the letter was addressed to the MoD, as the MoD was the primary governmental interlocutor for organisations which desired to access conflict areas, regardless of the identity of the line ministry with which the agency had negotiated and signed their MoU. Any request for access across the front lines necessitated MoD approval. A second point to note is the fact of changing immigration procedures. These procedures changed from time to time and many complaints were made in MSF-H documentation concerning the timing, logic, and indeed motivation of these changes. It was, as this letter indicates, difficult for the organisation to be aware of and maintain compliance with changing procedures. And finally, it is worthy to make a note of the obsequious discourse used by MSF-H in this letter. The sub-text is an implicit acceptance of the right of the GoSL to demand INGO

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<sup>53</sup> Letter to the Minister of Defence from the Head of Mission of MSF-H, December 2001.

<sup>54</sup> The records do not indicate what assistance, if any, the MoD provided related to the visa situation of the six mentioned international staff.



compliance with rules and regulations and the language used is an explicit statement of promise that this will be the case.

A third dominant issue concerning restrictions was the fact that the Ministry of Defence tightly controlled the flow of medical supplies across the front lines. MSF-H often questioned how such decisions were made and thought in some circumstances the MoD had abused its powers of control. It was a common question how ‘a few sutures’ would materially support such a well-supplied military force as the LTTE. Beyond being seen as harassment of humanitarian agencies, the restrictions were considered to be a way of oppressing the Tamil population. Regardless, the process of negotiating supplies was complex, time-consuming, and the outcome very often dissatisfying to MSF-H.

Although these administrative issues were a constant challenge to MSF-H access, they were of course only the external manifestation of underlying tensions between humanitarian INGOs and the GoSL. A discussion of a few of these underlying tensions follows.

#### 3.3.4. Politics

There is more to the concept of politics than deciding on who is a friend and who is an enemy, for the purposes of the current discussion this dichotomy is useful to understand how the GoSL made decisions about how NGOs would be managed. Local NGOs, national NGOs receiving foreign funding, and international NGOs were all treated differently, but as a set, NGOs were often put into the ‘enemy’ category. It must be stressed that the term ‘enemy’ is not here meant to indicate an actual enemy in the sense that the LTTE was an enemy combatant, but in the sense of being perceived a threat to individual constituencies or the nation, however defined. The external manifestations of the process of designating NGOs as foes were the legislative acts and bills concerning the registration and work of NGOs, the official bodies tasked with NGO oversight, and the associated rules, regulations, and procedures they were required to implement and monitor.

The reaction of MSF-H to NGO-related political manoeuvrings is complex and difficult to summarise. It is also questionable how aware MSF-H was concerning political issues. These questions will be investigated more fully in the next chapters. But suffice it to say here that MSF-H’s access was at times highly affected by political calculations regardless of its knowledge of the true background of decisions. And as will be discussed next, identity issues to a great extent informed political decisions.

### 3.3.5. Identity

States as well as NGOs have their own sense of identity. An NGO relies on its mandate, an image of the type of work it performs, and the cumulative thoughts of its employees and supporters to give it a certain idea about itself. This identity can be strong or weak, and is often differently perceived from within and outside the organisation. A state also has a sense of itself. This can be thought of in terms of being a state-nation or a nation-state, for example, and this identity can be essentially contested and divisive or universally accepted and unifying. History, ethnicity, and religion can all play a role in defining an identity and can also be misunderstood by actors external to the state under consideration. In this case study MSF-H had a strong self-identity as a humanitarian international NGO with a dual mandate of medical action and witnessing, and the Sri Lanka authorities under study had a strong identity as representatives of a unified, Sinhalese Buddhist nation.<sup>55</sup>

One key element which should be mentioned in relation to the identity theme is the East/West dichotomy. This dichotomy will be more fully explored in the following chapters, but here it is important to introduce the general idea that MSF-H was seen to be a Western organisation and much of the GoSL rhetoric was targeted at the interference of Western actors. MSF-H also seemed to be aware of the Eastern nature of the Sri Lankan regime, but the importance of these ideas will become clearer only upon further analysis.

Identities are not static. In the case of Sri Lanka a complex and dynamic symbiotic relationship existed between the conflict and identity formation. This interdependent relationship will be a prime focus of the analysis of the 2006 and 2008-2009 periods. As such a few words are indicated to review the role of the conflict in the negotiation between the GoSL and MSF-H.

### 3.3.6. Humanitarian Principles and Conflict

Principles are of vital importance to humanitarian organisations as has been discussed. Their intent is to allow a humanitarian agency to carve out operational space (morally, physically, and legally) in the midst of conflict. It should be remembered, though, that principles can be as useful to a state as to a humanitarian INGO, as adherence to a principle such as neutrality can make a state feel more comfortable with the presence of an international actor working in a conflict zone on its territory.

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<sup>55</sup> It should be understood that this was never an official stance of the government but a common perception amongst external observers.

But from the perspective of a state embroiled in a civil conflict, the most important concern relates to military strategy. Military strategy is understood in the Clausewitzian sense, i.e., military operations being an extension of political considerations. And this is indeed the environment which spurred the creation of humanitarian principles in the first phase of Western-style humanitarianism and which is still the basis of contemporary International Humanitarian Law.

In the perspective of MSF-H neutrality and impartiality were problematic concepts that were not well understood in Sri Lanka, although in the MSF-H documentation from this period these concepts were also sometimes confused.<sup>56</sup> This makes analysis of specific principles difficult and oft times it is more efficient to lump the concepts together under the heading of ‘principled negotiated access’. This category denotes the use of principles in discussing with relevant authorities barriers to access and using these principles to argue for humanitarian access to conflict-affected populations (or more properly access by conflict -affected populations to humanitarian assistance). Two issues were of especial concern to MSF-H in this regard. The first related to accusations made against the organisation of providing medical assistance to the LTTE. MSF-H argued that it was not providing assistance in a partial manner to the LTTE but would, under conditions allowed by International Humanitarian Law, tend to the medical needs of LTTE combatants who were *hors de combat*. The second involved the perceived GoSL manipulation of aid based on the partial selection of people to be served. Though this was a fear—particularly the accusation mentioned above that the MoD was punishing the Tamil populations because of the activities of the LTTE, it was never well proven in the MSF-H documentation.

The role of principles in both interpreting events and in negotiating access will play a major role in the 2006 and 2008-2009 periods. To conclude the present discussion the last of the themes—relevancy, will be briefly discussed before looking at how all of the themes interrelate. The above review has spoken about barriers and influencers to access, but this begs the question—access for what purpose and to whom?

### 3.3.7. Relevancy

As with other themes elaborated upon above, this theme is also defined as a dichotomy, in this case between humanitarian needs as they were perceived by each actor. For MSF the aim was to define gaps in medical services (always within the humanitarian context of conflict), gaps which MSF could and should fill in order to ensure that the conflict-affected population was assisted. From the GoSL’s

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<sup>56</sup> For example, in operational and humanitarian affairs reporting from this period.

perspective gaps were also at the centre of consideration but the question related more to the usefulness, and indeed desirability, of an NGO filling identified gaps.

Uniquely in conflict zones in which MSF-H worked, the GoSL maintained responsibility for health care services in LTTE controlled areas. This fact was commented upon on many occasions in the MSF-H documentation. This, at least potentially, created a conflict of interest for the GoSL and, for that matter, the LTTE, and in MSF-H's view could at times negatively affect the level and quality of health care provided. This fact also limited the gaps that existed for a humanitarian agency to fill and played an important role in the logic and justification of operations for MSF-H. It also meant that the GoSL could argue that gaps did not exist. As it was, at a fundamental level, the GoSL decided what gaps existed and who would fill them, and this fact remained important in negotiations and decision-making for all parties concerned. On the part of the GoSL it was a matter of deciding on the usefulness of various actors being present and providing services. As mentioned above, what in effect was a cost-benefit analysis was continually being made by the GoSL concerning the presence of INGOs—in the country as a whole and in Tamil areas specifically, and on what activities those organisations would be allowed to implement.

The 2009 period, as will be seen, was the most stark case of relevancy being a factor in decision-making over access, by both parties, but it was always a 'live' issue for MSF-H, and will be a factor also in the 2006 period.

#### **IV. Themes and Periods of Study**

For conceptual clarity and ease of analysis the above themes have been formed into discrete categories and dichotomies have been created to speak to the differing perspectives of the two actors. But these themes are of course not present as coherent categories in the actually existing world and would not have been treated as such by the actor's themselves (assuming that they were considered at all). This final section of this discussion then points to some ways in which the themes interlinked.

Three concepts in particular pervaded all of the themes—principles, politics, and identity. Collectively these were at the centre of negotiations around all aspects of access and helped to define internal compromises.

Principles were the reference point for MSF-H and if any of the themes and concepts could be considered a central point for discussion and decision-making principles filled that role. As the analysis progresses through the 2006 and 2008-2009 periods principles will become increasingly

important to MSF-H—both as a way for the organisation to decide on its action but also as a way to interpret and react to the behaviour of the GoSL.

For the GoSL politics was the most important factor in decision-making. Implicit in this idea is the existence of the conflict, as the GoSL had to make decisions related to its view of political and military necessity regarding the conflict. But besides the conflict, but intimately informed by it, was an overall sense of identity which influenced political decision-making. This will become clearer as the analysis continues through time and will involve the play of cultural identity in the Sinhalese community in relation to the Tamil minority and the progress of the conflict. Coming full circle, the identity of MSF-H—as understood by itself and the GoSL, informed how it used principles and how it was reacted to by the political structures. As MSF-H was desirous of working in the conflict-affected zones with the minority Tamils and alongside the LTTE, which made the organisation suspect, this forced particular elements of the Sinhalese elites to push for certain political choices to be made. As can be seen, then, it was not only a contested relationship but a complex, dynamic, and symbiotic one.

In order to analyse how the themes of principles, politics, and identity evolved over time and the factors which went into these changes, appropriate periods of study had to be chosen. Periodisation could have been handled in a number of ways, but the most obvious was to take the ebbs and flows of the civil war itself as the basis as the civil war was the background condition against which the relationship between the GoSL and MSF-H developed. The changing dynamics of MSF-H's involvement in Sri Lanka were set against the civil war timeline. This created an integrated periodisation which reflected the symbiotic nature of the relationship between of the two actors within a context of civil war. In reviewing the choice of earlier periods of the war it became apparent that, although relations between MSF-H and the GoSL were always tense and access was a chronic issue, the working relationship was for the most part constructive. Continuous negotiation was necessary, but access was almost always possible. The most important issue for MSF-H in the periods before the temporary withdrawal in 2004 concerned the amount and types of medical supplies allowed to cross the front lines. The fact of MSF-H's presence in the Vanni was never fundamentally questioned, at least until the organisation discussed pulling out in 2004 because of the decreasing humanitarian impact of the conflict. The reengagement in 2006, however, was a different matter, and the very presence of the organisation was called into doubt.

The year 2006 coincided with the re-starting of the conflict. Access for MSF-H in this period was exceedingly difficult, but its status in the country was 'normalised' by the beginning of 2007 and

operations could again be implemented in the Vanni. But by late 2008 the war had intensified as the conflict moved into its final phases and the almost total lack of humanitarian access became a major issue for the organisation. These two periods provide a useful in-case comparison between a period when access was difficult but could in the end be negotiated and a time when access was denied and no amount of negotiation could change the situation. This comparison will be useful in determining the variables which went into decision-making on the part of both actors in reacting and influencing the developing context.

## **Part II**

**Analysis:**

**2006**

**and**

**2008-2009**

## **Chapter Three**

### **Defining Friends and Enemies:**

#### **The Process**

##### **I. Introduction**

In telling the story of how MSF-H interacted with the GoSL in the 2006 to 2009 period the endpoint is known. In May 2009 the war ended and MSF-H, along with almost all other humanitarian actors, had been blocked since late 2008 from accessing the conflict-affected population at the crucial—for humanitarians and the armed actors alike, last months of the fighting. This was the low-point for a relationship which had had many ups and downs over the previous three years, or indeed two decades. The challenge was to explain how the relationship developed to that point—to trace the process of events, decision-making, and how discourse was used in constructing the relationship. The overall questions addressed were: What happened, by and to whom, where and when? And what events were important from the perspective of the research question—how was the relationship between the GoSL and MSF-H actually constructed? The process tracing findings do not determine a cause and effect relationship between events and policy decisions, but point to significant associations between them. The process tracing exercise is told in narrative form and first sets out the factual story before a presentation of the uncovered associations between events and policies.

This chapter discusses the beginning of this period—the end of 2006 when MSF-H was attempting to re-start its operations in Sri Lanka after a hiatus of two years, albeit punctuated with a brief tsunami-related intervention in early 2005. The July to November 2006 period in particular was a difficult one for international organisations working in Sri Lanka. The attitude of the political elites towards NGOs, both local and international, was aggressively negative. Tensions had been rising since the boxing day 2004 tsunami for a number of interrelated reasons connected with the evolving political and military situation. The end point of this period was the introduction of a number of restrictions on INGOs, especially those desiring to work in the conflict-affected north and east. As will be seen in more detail in chapter five, this was for MSF a very difficult period in which to re-start operations.<sup>1</sup> Two of the MSF sections were accused of serious crimes and were on the verge of

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<sup>1</sup> Any story which involves more than one MSF section will be confusing to the general reader. Three MSF sections were in-country during 2006 and each had their own story. Although this study focuses on MSF-H, given the nature of the interlinked relationship between MSF sections it is impossible to tell the story of one section without including the stories of the other sections. As will be seen in these chapters, although MSF-H



being expelled from the country, resulting in their operations being suspended or planned programmes not being started. MSF-H, which was in the process of completing the administrative steps necessary to begin operations, became entangled not only in the MSF difficulties but also in the general restrictions placed on INGOs during this period. In the end the MSF sections all endured the period and were able to become operational once the restrictions on humanitarian agencies were partially relaxed at the beginning of 2007. The specific questions for chapter three and four are—why did the anti-NGO tensions develop and why did the government deem it necessary to put into place new, tougher, restrictions on INGOs in this period? Based on this background an examination of MSF-H's conduct will be performed in chapter five.

It is important to keep in mind the theoretical framework when tracing the process of events. MSF-H was the external in the internal—a representative of a moral norm operating in a political context, with all actors driven by the need to respond to the consequences of the civil war, each actor in its own way. The task is to untangle the way in which the domestic political actors set the agenda regarding humanitarian international actors. To do this three interlinked processes must be examined—the political process of defining 'friend and enemy'; the legal and administrative process of organising a 'state of exception' to the normal order; and the securitisation of the 'enemy' through discourse. But in many ways these processes were symptoms of, or reactions to, more fundamental causes and issues. Behind these processes identity formulation and expression played a major role in how political decisions were made, identity and politics being a symbiotic pair. These in turn did not exist in a vacuum, as the conflict influenced and was influenced by the identity—politics relationship. Uncovering how this identity-politics construct formed and developed in relation to the war and how humanitarian INGOs fit into this construct is the key to the following analysis. Concrete examples derived from this basic structure will be elaborated on in the course of the analysis. These examples will be expressed as relational triangles, the generic triangle being the adversarial relationship between the GoSL, the LTTE, and INGOs. Within each period the configuration is expressed in different ways. This somewhat abstract conceptualisation will become clearer as the analysis progresses.

In chapter one Schmitt's concepts of 'friend and enemy' and 'state of exception' were applied to the context of civil war. The Sri Lanka conflict is a striking example of these themes, specifically in the way in which the various political actors formulated the friend-enemy dichotomy and the way

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had its own, unique issue with the GoSL, the Dutch section also became entangled in the stories of the other MSF sections. Thus, the 'rough start' not only applied to MSF-H but to MSF in general.

administrative and legal policies were adapted to the changed views on this dichotomy. The ‘enemy definition was complex’.<sup>2</sup> Schmitt’s analytical categories have been seen to be highly relevant to the ‘ideological approaches to political power that are based on an emphasis on the executive branch and a strong association of nationalism with the state and its security at all costs’, as the Sri Lankan context has been characterised by Welikala, whose work on the use, and misuse, of emergency powers in Sri Lanka has also drawn on Schmitt’s conceptions of the political and the state of exception.<sup>3</sup> Before continuing it should be made clear the extent of emergency rule during Sri Lanka’s civil conflicts.<sup>4</sup> Starting with the JVP-led insurgency in the south, emergency rule was in place from the early 1970s to 2011 with only brief interludes, such as between 2001 and 2005, but then continuously again until 2011.<sup>5</sup>

A reference point is necessary to correctly evaluate the nature of these changed administrative and legal policies—these emergency powers, and indeed to be able to characterise such policies as being within or outside normal legal parameters. Globally the ‘lawless nature’ of the conflict has been commented upon by Welikala. In his view, both political actors—the GoSL and the LTTE—were ‘less than solicitous about internationally established basic norms of armed conflict, especially those concerning international human rights and humanitarian standards in respect of civilians’, and only ‘international exposure and fear of censure’ would force adherence to such legal norms,<sup>6</sup> a point highly pertinent to this analysis. In this context where such legal norms were no longer applied, how could the actually existing ‘legal’ order be characterised? Through the repeated institution of states of emergency, the government arrogated to itself ‘an extraordinary array’ of emergency powers.<sup>7</sup> Such states of emergency, when a government deals aggressively with an acute crisis in the name of the polity, are a difficult balance between democratic norms—human rights and constitutionalism—and the need to respond effectively to the crisis.<sup>8</sup> On the informal, political level, ‘an epistemological discourse of ‘patriot or traitor’—equivalent to Schmitt’s friend and enemy—was used which bred a culture of impunity and immunity. And it was civil society, particularly journalists, which suffered

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<sup>2</sup> Keen, ‘The Camp’, p. 10.

<sup>3</sup> Welikala, *Permanent Crisis*, p. 24.

<sup>4</sup> For a fuller discussion see: Radhika Coomaraswamy and Charmaine de los Reyes, ‘Rule by Emergency: Sri Lanka’s Postcolonial Constitutional Experience’, *International Journal of Constitutional Law*, 2:2 (2004), pp. 272-295.

<sup>5</sup> Deepika Udagama, ‘An Eager Embrace: Emergency Rule and Authoritarianism in Sri Lanka’, in Asanga Welikala (ed.), *Reforming Sri Lankan Presidentialism: Provenance, Problems and Prospects* (Colombo: CPA, 2015), p. 290.

<sup>6</sup> Welikala, *Permanent Crisis*, p. 11.

<sup>7</sup> Welikala, *Permanent Crisis*, p. 13.

<sup>8</sup> Welikala, *Permanent Crisis*, p. 16-17.

the most from this ‘dreadful political ideology’.<sup>9</sup> In addition, as this study will elaborate, humanitarian agencies were also affected by this use of emergency powers.

With this theoretical starting point in mind, in this chapter and the next the 2006 case will be examined from the Sri Lankan government’s perspective by making a detailed analysis of how the events developed in the July-November period and how those events were associated with the decision-making of the GoSL in relation to INGOs. The narrative of events relies heavily on media sources and government statements, as there is a wealth of detail in these sources concerning the events this analysis is concerned with. A close examination of media reports has enabled an in-depth understanding not only of GoSL decision-making and the influence of those events on that decision-making, but also on how the GoSL explained and justified its actions towards INGOs. Securitisation, it will be remembered, is conducted through discourse, as is the negotiation process itself. As will be seen in chapter five on MSF-H’s response to the events analysed below, these media reports were essential in allowing such an INGO to implement its own tracing of events, as a forum for dialogue between the GoSL and MSF-H, and as a platform for desecuritisation activities.

The events of the July-November period cannot, of course, be studied in isolation, but were informed by what occurred previously. Rarely do nationally relevant events occur which do not impact on other aspects of society, or are not influenced by those other aspects. Events do not take place in a vacuum and at some level are interrelated. A civil conflict will impact on many other aspects of society—economic, political, and social; as well, economic policies, political tensions, and social attitudes all inform the development of a conflict. Natural disasters will also have a similar range of effects and influencers. In a situation where there were both a civil conflict and a natural disaster happening concurrently it is especially difficult to tease out the impact of particular events and what influenced the occasion of these events. This is the case for Sri Lanka in the run-up to the period of study. At the same time that the country was recovering from the devastation of the boxing day tsunami of 2004, the civil war with the LTTE was heating-up again. Though these tracks are intimately interrelated, for sake of conceptual clarity they have here been divided into two separate discussions in order to be able to more fully examine how each track developed. This background story is therefore told in two parts—the first related to the tsunami and the second to the war. The theme of both discussions is the identification of friends and enemies, the purest form of politics. In the post-tsunami period a pre-existing triangular relationship between the national political authorities, the LTTE, and foreign organisations was reinforced. The war track approaches the theme

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<sup>9</sup> Welikala, *Permanent Crisis*, p. 13.

through examining how the GoSL projected its sovereignty and protected its national security in relation to the developing conflict with the LTTE. In the war period foreign organisations' position in the triangular relationship was hardened as they became securitised through discourse. The research period is in fact defined by the merging of these two tracks, where INGOs became both political enemies and security threats, necessitating firm handling in a context which could be considered a state of exception.

This and the next chapter will be presented using the following analytical structure:

- *Differentiation*: The creation of difference between the self and others by distinguishing between friends and enemies will be discussed in this chapter.
- *Organisation*: The question of how these messages were organised will be dealt with in the next chapter.
- *Meaning*: The issue of what was meant to be understood by these messages will also be treated in the chapter four.
- *Action*: Reflected upon in chapter four will be the questions: What were the actions the messages justified? And what was done—or planned to be done—based on the messages?
- *Practice*: How was the discourse 'done'? Through what means was discourse conveyed? These queries will be answered in the last section of chapter four.

## **II. Friends and Enemies**

### **2.1. Politics and War**

To properly grasp the July to December 2006 period it is necessary to explore the antecedent conditions which informed the events under consideration. The most essential aspects of the background context for this story relate to the war and the political context. The general outline of the conflict as elaborated upon in chapter two should be kept in mind. To briefly review, Eelam War I lasted from the time of the anti-Tamil riots of 1983 until 1987, when the Indian Peacekeeping Force attempted but failed to pacify the north and east. Once the Indians pulled-out in 1990 the conflict reverted to an internal Sri Lankan conflict. Eelam War II lasted from 1990 until 1995 at which time peace talks were briefly held but these failed to lead to a lasting peace. The renewal of conflict between 1995-2002 is referred to as Eelam War III. A ceasefire agreement was signed in 2002, beginning a hopeful period of peace, which lasted through the tsunami period until 2006 when it became clear that the peace agreement was failing. The last period of the war, Eelam War IV, ended in May 2009 when the LTTE were defeated. The decision on where to begin the story is somewhat arbitrary, but as a cut-off must be determined, this story will begin in 1999, as in the 1999-2000 period the conflict was again heating-up and it was at this point that the Norwegians began their

involvement in the peace process, interjecting an international element which impacted on how other international agencies would be treated. The peace process led to the signing of the ceasefire agreement in 2002 (CPA), the contravention of which was a major event in the study period.

The 1999-2000 period witnessed increased military activity and a revitalisation of the LTTE. In February 2000 the Norwegian Minister of Foreign Affairs Knut Vollabaek whilst on a visit to Colombo announced that the GoSL and the LTTE had requested Norway to act as a mediator to facilitate discussions between the two actors in the conflict.<sup>10</sup> At the beginning of April 2000 the Norwegian government appointed Erik Solheim as Special Envoy to Sri Lanka.<sup>11</sup> This was the beginning of an, at times, very tense relationship between the Norwegian peace facilitators, the GoSL, and the LTTE. This triangular relationship between the GoSL, the LTTE, and a foreign actor, foreshadows a dominant theme for the 2006 period. As 2000 progressed the military situation became increasingly precarious for the government. In April 2000, after fierce fighting, the LTTE captured the strategically important Elephant Pass—the gateway to the Jaffna peninsula, as well as the Lyakachchi military complex. After this major defeat the government reverted to an emergency oriented governance structure and ‘imposed draconian security measures’, banning any activities which were perceived to be a threat to national security and giving the army and the police broad powers.<sup>12</sup> It will be seen later how this pattern was repeated in the post-tsunami and 2008-09 periods. The imposition of restrictions on organisations and activities which a government considers a threat to the war effort is a normal response and helps define a period as being in a state of exception. In such a situation a government will commonly use its prerogative to ensure that the national security threat is neutralised, even at the expense of normal civil liberties. As part of this process international organisations must be put into one of two categories—friend or enemy.

Parliamentary elections in December 2001 gave the United National Front (UNF) (an alliance of the United National Party (UNP), the Tamil National Alliance (TNA), the Sri Lanka Muslim Congress (SLMC), as well as a few People’s Alliance (PA) defectors) control of the government, though President Chandrika Kumaratunga, from the People’s Alliance, remained in office. Thus the Prime Minister, Ranil Wickremasinghe, represented a different party than the head of state. The cohabitation proved ‘uncomfortable’.<sup>13</sup> On the war front, in July 2001 the LTTE destroyed more than a dozen military and civilian aircraft at Sri Lanka’s main air force base and only international airport.

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<sup>10</sup> de Silva, *Defeat*, p. 163.

<sup>11</sup> Sri Lanka Monitoring Mission (SLMM), *The SLMM Report 2002–2008* (Oslo: The Norwegian Ministry of Foreign Affairs, 2010), p. 23.

<sup>12</sup> de Silva *Defeat*, p. 165.

<sup>13</sup> de Silva *Defeat*, p. 172.

Four months earlier the LTTE had been listed as a terrorist organisation by the United Kingdom, the third country to do so after India (1991) and the USA (1997).<sup>14</sup> An informal ceasefire was put into place in December 2001, whereas a formal ceasefire agreement (CFA) was signed on 22 February 2002 and the Sri Lanka Monitoring Mission (SLMM), the Nordic-led peace monitoring mechanism, was established. The CFA stipulated a number of steps, such as the lifting of travel restrictions; removal of check-points; the opening of the A-9 road—the main road from the Sinhalese heartland (Kandy) to the largest city in the Tamil north (Jaffna) which ran through the LTTE controlled Vanni; and the mandating of the SLMM.<sup>15</sup> The GoSL created the Secretariat for Coordinating the Peace Process (SCOPP) and the LTTE formed the Peace Secretariat as the institutions to facilitate the peace process. The SLMM was formally instituted by a Status of Mission Agreement (SOMA) negotiated between the Government of Norway and the GoSL. The GoSL provided air transport facilities to the SLMM. It should be made clear that the SLMM was an international *non-military* ceasefire monitoring mission, though staffed by military observers. By September 2002 the ban on the LTTE was lifted by the GoSL to facilitate the peace process.<sup>16</sup>

In February 2004 the Sri Lanka Freedom Party (SLFP), the party of the future prime minister and then president Mahinda Rajapaksa, negotiated an agreement with the neo-Marxist, Sinhalese nationalist Janatha Vimukthi Peramuna (People's Liberation Front) (JVP) to form a coalition government, what would become the United People's Freedom Alliance (UPFA). In the parliamentary elections of April 2004 the coalition defeated the UNF and Rajapaksa became prime minister. The Jathika Hela Urumaya (National Heritage Party) (JHU), a Sinhalese nationalist party newly founded by Buddhist monks, took nine seats. But the UPFA was never able to muster a majority. In the midst of these political developments the boxing day 2004 tsunami hit the island, bringing massive destruction to the coastal areas. The tsunami will be reviewed in more detail below. In the next steps to power for party and person, Rajapaksa narrowly won (50.3%) the presidential election of 17 November 2005, and in June 2006 he consolidated power by becoming the chair of the SLFP. This government was also based on an alliance with the JVP which, as will be seen, caused political instability which in critical ways affected the relationship between international actors and the GoSL. But as 2006 progressed Rajapaksa increasingly lost support from the JVP and JHU and as such made overtures to smaller parties which had formerly been aligned with the UNP. In mid-2006 began talks with the UNP itself, eventually resulting in an MoU being signed with them at the end

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<sup>14</sup> Chandra R. de Silva, 'Sri Lanka in 2006: Unresolved Political and Ethnic Conflicts Amid Economic Growth', *Asian Survey*, 47:1 (2007), p. 102.

<sup>15</sup> SLMM, *Report*, p. 24.

<sup>16</sup> de Silva, *Defeat*, p. 173.

of October.<sup>17</sup> The role of the JVP by this time had lessened with political implications which will be discussed later.

President Rajapaksa made two important defence related appointments. He appointed his younger brother Gotabaya Defence Secretary, retaining the title of Minister of Defence for himself, and he selected Sarath Fonseka as the commander of the army. These two were chosen because they were hard-liners who did not accept the idea that the LTTE were earnest in their negotiations and therefore believed that a military solution would be necessary to settle the conflict. On this view the effect of ceasefires were only to give room for the LTTE to regroup and rearm. On the Sri Lankan side the military was being revamped based on these beliefs. In this context ‘cowering Tamils in government-controlled areas, minimizing NGO involvement, controlling the media, suffocating civil society, and keeping political opponents weak and confused’ were the conscious strategies used by the Rajapaksa regime to give itself the space to fight the LTTE.<sup>18</sup>

Sinhalese Buddhist nationalists were the loudest and most consistent critics of NGOs. NGOs were seen as ‘ineffective, extravagant and corrupt’.<sup>19</sup> But the concern was not limited to NGOs, as ‘NGOs, Christianity, humanitarian agencies, LTTE, global capitalism and moral decline—all mixed together’ to form a ‘sense of apprehension’ in the Sinhalese Buddhist community.<sup>20</sup> A common theme of what has been termed ‘Sinhalese Buddhist chauvinism’ was the idea that international NGOs and Western countries were hostile to Sinhalese Buddhist civilisation.<sup>21</sup> Humanitarian international agencies were especially open to opprobrium because they were foreign entities, and were perceived to be solely accountable to Western donors and their publics.<sup>22</sup> Anti-globalisation rhetoric was used by both sets of ethno-nationalists, inclusive of opposition to NGOs, foreign interference, and fears of Christian conversions.<sup>23</sup> As an example of the Sinhalese Buddhist nationalist viewpoint, point five of the JHU’s political manifesto from 2004 stated that ‘the Government should control and monitor all the activities and monetary transactions of the non-government organizations that are in operation in Sri Lanka. This is an indication of a religious concern that the JHU has raised with accusations

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<sup>17</sup> de Silva, *Unresolved*, p. 104.

<sup>18</sup> Neil DeVotta, ‘Sri Lanka: From Turmoil to Dynasty’, *Journal of Democracy*, 22:2 (2011), p. 133.

<sup>19</sup> Amarasuriya and Spencer, ‘Cultural Values’, p. 127.

<sup>20</sup> Amarasuriya and Spencer, ‘Cultural Values’, p. 130.

<sup>21</sup> DeVotta, ‘Turmoil’, p. 135.

<sup>22</sup> Marit Haug ‘Combining Service Delivery and Advocacy within Humanitarian Agencies: Experiences from the Conflict in Sri Lanka’, *Centre for Civil Society International Working Paper Series*, 10, London School of Economics and Political Science (2001), p. 22.

<sup>23</sup> Kalinga Tudor Silva and S. Hettige, ‘Multiculturalism and Nationalism in a Globalising World: The Case of Sri Lanka’, in Dhammika Herath, et al. (eds.), *Post-war Reconstruction in Sri Lanka: Prospects and Challenges* (Kandy: International Centre for Ethnic Studies, 2010), p. 13.

[regarding] evangelical Christians'.<sup>24</sup> There was clearly a 'crisis of legitimacy' concerning NGOs in the eyes of the public, especially when NGOs were engaged in activities related to the peace process.<sup>25</sup> Ideological communities such as the JVP and JHU were particularly hostile to what was understood to be a human rights agenda grounded in a Western ideological perspective. The work of international NGOs was also particularly open to criticism as they were thought to threaten the sovereignty of the state. "Internal sovereignty" and 'non-interference' [were] key terms in the political rhetoric of Sinhalese nationalists, to be protected at all costs'.<sup>26</sup> As such, members of civil society activists in Sri Lanka had to contend with 'impassioned Buddhist nationalists, LTTE and an aggressive government that can stymie and circumscribe their activities, and their own disconnected agendas'.<sup>27</sup> The GoSL—and nationalists—often used the media to 'instil fear and suspicion' in the general public about the work of NGOs, creating strong anti-NGO feelings.<sup>28</sup>

The political developments in the 1999 to 2006 period can be summarised as the coming to power of the SLFP, the political rise of Mahinda Rajapaksa, and the increasing role of the JVP and other Sinhalese nationalist parties such as the JHU in the SLFP-led governments. The political dynamic between these political actors will play an important role in how humanitarian international organisations negotiated their presence and operations in Sri Lanka. The development of the conflict is of course the other critical element from this period. Humanitarian international organisations were most concerned with gaining access to conflict-affected regions. As the conflict subsided the interest of humanitarian agencies also receded, as occurred after the 2002 CFA when agencies such as MSF left the country when it was thought that the peace agreement was holding, but re-entered the country once the war was again heating-up. Through the following analysis the connection between the war and political developments will be made clearer. With this political and military background reviewed it is now time to turn to the tsunami and its aftereffects.

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<sup>24</sup> Mahinda Deegalle, *Buddhism, Conflict and Violence in Modern Sri Lanka* (London: Routledge, 2006), p. 391.

<sup>25</sup> Dhammika Herath, 'Social Reconciliation Amidst Material Reconstruction', in Dhammika Herath, et al. (eds.), *Post-war Reconstruction in Sri Lanka: Prospects and Challenges* (Kandy: International Centre for Ethnic Studies, 2010), p. 73.

<sup>26</sup> Bruce Matthews, 'The Limits of International Engagement in Human Rights Situations: The Case of Sri Lanka', *Pacific Affairs*, 82:4 (2009), p. 582.

<sup>27</sup> DeVotta, 'Turmoil', p. 172.

<sup>28</sup> Herath, 'Social Reconciliation', p. 74.



## 2.2. The Tsunamis

The central idea to be kept in mind concerning the tsunami and its aftereffects is that the political authorities, most notably the JVP and the JHU while in a coalition government with the SLFP, designated who were friends and who were enemies against the Sinhalese nationalist agenda of defeating the LTTE and creating a state dominated by the Sinhalese majority. In this light the tsunami and its aftereffects created a dynamic which had to be politically managed. As is commonly observed there were in fact two tsunamis. The first was the physical wave which hit Sri Lanka on boxing day 2004. The second tsunami was the metaphorical wave of INGOs which ‘flooded’ the island in early 2005. There were a number of issues of concern for the government as a result of this second tsunami, including the uncontrolled flow of large amounts of aid funding, the perceived interference in Sri Lankan affairs by international actors, the sensitivities of the rehabilitation effort in conflict-affected areas, concerns about corruption and the misuse of funds as well as about monies and materials finding their way to the LTTE, and finally the slowness of the response. These issues and concerns would prejudice the relationship between INGOs and the GoSL in ways beyond the tsunami response and would help reinforce the GoSL—LTTE—INGO adversarial triangle.

The tsunami will be discussed in the following manner. The actual effects of the tsunami will be reviewed to put the discussion into context, followed by a discussion of the failed P-TOMS arrangement, and lastly the tsunami response critique will be examined.

### 2.2.1. The Effects of the Tsunami

The massive tsunami which hit Sri Lanka on boxing day 2004 caused major damage to many coastal areas of the island. One third of the coastline was affected, 30,000 people died, and 20% of population lost their lives or their livelihoods or lost a substantial amount of income.<sup>29</sup> There were 516,150 displaced, 98,000 homes were demolished or destroyed, and 150,00 livelihoods were affected.<sup>30</sup> The south, south-east, east and north-east coasts were the most affected. The tsunami also had substantial political ramifications, for Sri Lankan political parties and also for humanitarian agencies and Sri Lanka civil society. The government’s response was thought to be inadequate by the population, making the government even more unpopular than it had already become.<sup>31</sup> The co-existence of man-made and natural disasters complicated the aid effort. From a relief and rehabilitation response

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<sup>29</sup> de Silva, *Defeat*, p. 176.

<sup>30</sup> Mandeep Kaur Grewal, ‘Approaches to Equity in Post-tsunami Assistance. Sri Lanka: A Case Study’ (Office of the United Nations Special Envoy for Tsunami Recovery, 2006), p. 9.

<sup>31</sup> de Silva, *Defeat*, p. 176.

perspective the objective was to get proper resources to the zones most in need as quickly as possible. As the north-east was under LTTE control a mechanism had to be found for the GoSL, the LTTE, and international agencies—the aid triangle, to cooperate in relief distribution. The proposed solution was the Post-Tsunami Operations Management Structure (P-TOMS), which was meant to establish a mechanism to facilitate rehabilitation activities in LTTE controlled areas. It was an administrative device to ensure funds were shared and distributed equitably. In general Sinhalese nationalist parties did not support it. The JVP were firmly against the LTTE and were thus against P-TOMS, as it was seen to legitimise the LTTE. The JVP threatened to pull out of the government if it went ahead, which it eventually did when the P-TOMS draft agreement was signed at the end of June 2005. P-TOMS, though, was supported by the UNP.

This disagreement over the value and wisdom of P-TOMS is illustrative of the basic political tensions associated with the tsunami response. From a Sinhalese nationalist standpoint, as represented by the JVP, any policy which could be seen to support the LTTE was rejected, as was any policy which encouraged the more active involvement of foreign organisations in the conflict zones. These tensions also pointed to the fundamental instability of the coalition government and the fact that the tsunami response was a politically sensitive issue. The JHU and other elements of the Buddhist clergy also protested against P-TOMS, even accusing those in support of it, including President Kumaratunga, as ‘enemies of Buddhism’, and conducting ‘fasts to the death’ in protest.<sup>32</sup> Regardless, negotiations continued between the Ministry for Relief, Reconstruction and Reconciliation and the LTTE’s Planning and Development secretariat and were completed in March 2005. The JVP, immediately after the draft was signed in June 2005, filed a petition with the Supreme Court to have P-TOMS struck down. Their challenge, amongst other issues, was based on the idea that it threatened the territorial integrity of the state and that the LTTE, being a terrorist organisation, had no legal right to sign an agreement. In mid-July the Supreme Court ruled that certain aspects of the agreement were indeed unconstitutional. Within this context Rajapaksa included an anti-P-TOMS plank onto his presidential campaign platform based on agreements with the JVP and JHU made in September 2006. This platform included a commitment to a unitary state, a rejection of any form of federalism, and commitments to review the CFA and end any on-going discussions of power-sharing agreements with the northern Tamils.<sup>33</sup>

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<sup>32</sup> Margo Kleinfeld, ‘Misreading the Post-tsunami Political Landscape in Sri Lanka: The Myth of Humanitarian Space’, *Space and Polity*, 11:2 (2007), p. 179.

<sup>33</sup> de Silva, *Defeat*, p. 179.

Beyond the political tensions over the constitution of P-TOMS there were more general concerns with how the tsunami funds were being used. In September 2005 the auditor general published a report on the use of tsunami funds and found irregularities, including in how aid monies were collected, distributed, and their use monitored.<sup>34</sup> For the most part the report detailed issues with how the government managed tsunami funds rather than problems with NGO programming.<sup>35</sup> Regardless, in the press the report was used to paint a negative picture of how the tsunami effort was implemented by all actors, including, and often especially, NGOs.<sup>36</sup> It was an oft repeated idea that the initial tsunami response had not, in fact, been dominated by NGOs, but by other civil society actors who were in fact the real first responders, such as Buddhist temples.<sup>37</sup> In addition, it was felt that, as political and military authorities and international agencies became involved and took charge of the relief response, the impartiality of the response was affected,<sup>38</sup> marking the later period off from the initial impartial and spontaneous local response immediately after the tsunami. The JVP in particular was concerned about the tsunami response, charging in parliament that the government and NGOs were not following proper procedures in granting houses to tsunami victims, and as a result of this many beneficiaries had still not received new housing while in some cases houses had been given to people whose houses had not in fact been destroyed.<sup>39</sup>

Following on these perspectives late 2005 witnessed the first indications of the desire of the GoSL to audit NGOs, initially related specifically to the tsunami rehabilitation efforts, but as the war heated up the conduct of NGOs in the conflict zones also became a major concern. A Parliamentary Select Committee (PSC) was set-up to investigate NGOs. The committee's interim report published in 2008 described the process of its founding and objectives. A motion was tabled in parliament by Nandana Gunathilake, a JVP MP, on 30 August 2005, on the basis of which it was decided to set up a select committee to look into the operations of foreign and foreign-funded non-governmental aid organisations that were operating in Sri Lanka with the intention to:

Inquire about the level of transparency of the financial activities of those nongovernmental organizations, identify the manner in which the operations of the said nongovernmental organizations have made an impact on the sovereignty and national security of Sri Lanka,

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<sup>34</sup> 'Interim Report of the Auditor General on the Rehabilitation of the Losses and Damages Caused to Sri Lanka by the Tsunami Disaster on 26 December 2004, carried out up to 30 June 2005', Auditor General, Government of Sri Lanka, 2005.

<sup>35</sup> *Island*, 26 September 2005.

<sup>36</sup> The acronym 'NGOs' will be used when indicating a collection of international and national NGOs or when it is uncertain in the sources whether international or national NGOs, or both, are being referred to.

<sup>37</sup> *Daily Mirror*, 19 July 2005.

<sup>38</sup> Alan Bullion, 'The Peace Process in Sri Lanka', in Manas Chatterji and B.M. Jain (eds.), *Conflict and Peace in South Asia* (Emerald Group Publishing Limited, 2008), P. 166.

<sup>39</sup> *Daily Mirror*, 6 October 2006.

identify the way the operations of those non-governmental organizations have made an impact on national and social well-being and inquire into the manner in which the Government of Sri Lanka should act with respect to these nongovernmental organizations and make the necessary recommendations.<sup>40</sup>

The Committee at first consisted of 19 members representing all of the political parties in parliament. The PSC was formally established in January 2006. The first chairman, Nandana Gunathilake, was replaced by Vijitha Herath, also a JVP MP, in May 2006.<sup>41</sup> A *Sunday Leader* article makes clear the key role of the JVP in the committee's formulation: 'The JVP was the only political party in the country against NGOs, being especially critical on the sources of NGO funding'.<sup>42</sup> Other parties, in fact, were also against NGOs, such as the JHU, but it is fair to say that the JVP was the most vocal in their opposition to NGOs. This anti-NGO, especially anti-foreign NGO, attitude found an ideological basis in the Sinhalese nationalist agenda of the JVP as discussed above. Interestingly, the JVP and the JHU were compared to the LTTE in their ideological rigidity: 'The LTTE and (as is now increasingly apparent) the Southern based twin forces of the Janatha Vimukthi Peramuna and the Jathika Hela Urumaya possess a common inability to brook resistance to their ideas'.<sup>43</sup>

The PSC will play a major role in how this story develops. Though the impetus of the PSC was the tsunami response, the investigation became more far-reaching over time. In September 2005, when the original motion was tabled for its formation, the conflict had not yet heated-up and the primary concern at that time, only nine months after the tsunami, remained with the rehabilitation activities. Yet the specific concerns of the committee—that NGOs may have a negative impact on the sovereignty, national security, and social and national well-being of the country, should be noted, as should the overall goal of deciding what the government should do about such implicit threats. These concerns must be read in light of a Sinhalese nationalist ideology, where both NGOs—foreign and national—and the LTTE were considered threats. Packaged together, the concepts of sovereignty—political autonomy for the Sinhalese political elites; national security—the protection of the state against the LTTE menace; and the social and national well-being of the country—which could easily be read as the continued dominance of the Sinhalese elites unfettered by foreign influences and Tamil terrorist violence; all together outlined a particular social-political agenda which left little room for the work of foreign, or foreign-funded, NGOs who were often seen to be LTTE supporters. This

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<sup>40</sup> 'Interim Report of the Select Committee of Parliament for Investigation of the Operations of Non-Governmental Organizations and their Impact', presented to parliament on 8 December 2008.

<sup>41</sup> Select Committee of Parliament (PSC), 'Interim Report'.

<sup>42</sup> *Sunday Leader*, 9 July 2006.

<sup>43</sup> *Sunday Times*, 27 August 2006.

story is, fundamentally, one of the government deciding if, and how, NGOs threatened the Sri Lankan state and nation and what the GoSL should do to counter those threats.

In November 2005, after Rajapaksa had narrowly been elected president, a new entity, the Reconstruction and Development Agency (RADA), was formed to replace P-TOMS as it had been suspended as a result of the election agreement between Rajapaksa and the JVP. Given the realities of the coalition government the president could not ignore this demand and had to act swiftly. As opposed to previous configurations RADA was to take a bottom-up approach and to facilitate and coordinate with the district and provincial authorities who were to participate in all planning activities. All relevant actors, governmental and civil society alike, including international NGOs, were required to work together.<sup>44</sup> Though ineffective for many months, during this research period RADA would become a major voice once it was placed under active leadership.

With this as the background, the next section will review the critique of the tsunami response. Was there satisfaction with the way in which NGOs had actually responded operationally?

#### 2.2.2. The Response Critique

The response critique is, of course, a discursive environment, formed through many different voices. This section attempts to paint a picture of this discursive environment.

As Sri Lankan political elites had long been concerned with ‘foreign interference’ and ‘neo-colonialism’, it was not surprising that the tsunami response was also analysed from that perspective.<sup>45</sup> Some of the criticism was sound, of course, as no such massive response is flawless. International NGOs were not always sensitive to the local context and dynamics in how they disbursed funding, for example.<sup>46</sup> An estimated 300 new INGOs arrived in Sri Lanka within the first month, four times as many as were present before the tsunami; out of these it was estimated that only roughly one half had registered with the Centre for National Operations (CNO), the government clearing house for tsunami operations.<sup>47</sup> A major theme in the press concerned the slowness of the rehabilitation response. By August 2006, 20 months after the tsunami had struck Sri Lanka, some 40,000 families were said to be still living in inadequate temporary shelters.<sup>48</sup> The actual numbers

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<sup>44</sup> *Daily News*, 1 July 2006.

<sup>45</sup> Weiss, *The Cage*, footnote 54, p. 302.

<sup>46</sup> Sisira Jayasuriya, Paul Steele and Dushni Weerakoon, ‘Post-tsunami Recovery: Issues and Challenges in Sri Lanka’, *Asian Development Bank Institute (ADB) Research Paper*, 71 (2006), pp. 16-17.

<sup>47</sup> Simon Harris, ‘Disasters and Dilemmas: Aid Agency Recruitment and HRD in Post-tsunami Sri Lanka (Part 1)’, *Human Resource Development International*, 9:2 (2006), p. 1.

<sup>48</sup> *Sunday Nation*, 27 August 2006.

were debated, but the press painted a dire picture, though at times using exaggerated numbers. It was often reported that many NGOs had failed to fulfil their pledges to build housing units. President Rajapaksa had indicated that all the promised housing units were to be provided by the two year anniversary yet there were real doubts in mid-2006 that the deadline could be met.

The frustration with INGOs in this period was clear: The *Sunday Nation* article from August continued that it was ‘sad to note that the International Non-Governmental Organisations (INGOs) have hardly contributed towards meeting the needs of the tsunami victims even after making pledges’.<sup>49</sup> The figures, the article continued, showed that INGOs had ‘failed miserably’ to deliver assistance and had made ‘bogus promises’. There was intense pressure on all fronts for INGOs to act quickly and focus on service delivery. On the surface this seemed a reasonable approach, but from the INGO perspective ‘this meant [that] some equally important aspects of humanitarian assistance, such as accountability to affected populations, the need to prioritize coordination, strengthening local capacity, and basing recovery on a human-rights approach, were side-lined’.<sup>50</sup> It is informative that some INGOs believed that obtaining a ‘quick impact’ should not always take priority and that there were differing perspectives on both objectives and how to gauge success. INGOs were thought to be unduly influenced by their media profiles.<sup>51</sup> The media, it was claimed, preferred to report ‘bleak, simplistic pictures of performance rather than elaborate on the complexities of the challenges involved in promoting equitable and sustainable recovery’.<sup>52</sup> Action was necessary to prove worth on the part of INGOs.<sup>53</sup> This general climate created pressure on INGOs to focus on quantity rather than quality. It should be emphasised that press report were not wholly negative, as it was recognised by some that it was important to facilitate the worthy work being done by some of the INGOs. However, negative articles did outnumber positive reports.

Lack of coordination and competition amongst NGOs was another common theme in the tsunami critique. The context was commonly labelled as a ‘humanitarian circus’, being defined by over-statement of needs, competition for funding, and poor accountability.<sup>54</sup> For agencies with secure funding there were few incentives to coordinate. And it was believed that some agencies were

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<sup>49</sup> Ibid

<sup>50</sup> Unattributed, *NGO Impact Initiative: An Assessment by the International Humanitarian NGO Community*, 2006, p. 11.

<sup>51</sup> *NGO Impact Initiative*, p. 11.

<sup>52</sup> Grewal, ‘Approaches to Equity’, p. 27.

<sup>53</sup> Georg Frerks and Bart Klem, ‘Tsunami Response in Sri Lanka, Report on a Field Visit from 6-20 February 2005’, Wageningen University and Clingendael Institute (2005), p.21.

<sup>54</sup> David Rieff, ‘Tsunamis, Accountability and the Humanitarian Circus’, *Humanitarian Exchange Magazine* 29 (2005), pp. 49-51.

‘openly hostile to any government action that seems to place ‘controls’ on their independence’.<sup>55</sup> Insufficient dialogue between NGOs and the government on policy issues was also noted.<sup>56</sup> Added to the criticism that NGOs failed to coordinate properly with the government was the even more serious allegation that organisations had taken advantage of the Sri Lankan government’s failure to implement proper accountability mechanisms. Although NGOs themselves were often criticised, the lack of a proper monitoring mechanism was also commented upon, and thus the need for better governmental monitoring mechanisms to be put into place. In many ways the two issues would become conflated into a sense of, at times, NGO responsibility for the poor response by the government in monitoring and controlling the response.

On the topic of tsunami funding many issues and practices were discussed and criticised. One theme repeatedly discussed was the idea that NGOs had collected money internationally using the suffering of the tsunami victims as a draw but did not use the monies for the victims. A *Daily News* article from 31 July, ‘Tsunami Swindlers’,<sup>57</sup> talked about the ‘tidal wave of sympathy’ worldwide which had helped NGOs to collect millions of dollars for the tsunami response. Sri Lanka had some NGOs which were ‘name boards’ only and existed solely to raise money from local and international sources for humanitarian projects which did not exist. It was often alleged that hundreds of NGOs had quickly been created after the tsunami to take advantage of the generosity of people in the West and in Sri Lanka who had been moved by the tragic events to help. Not all NGOs were in this category, but there was a need for laws to control those that were.

The large influx of funding on one hand allowed for the growth of local civil society organisations but on the other hand fostered the movement of people from local NGOs to INGOs which had more resources. There was a sense that such INGOs were dismissive of local organisations.<sup>58</sup> It was another common theme that INGOs promised that they would implement certain programmes but failed to fulfil their promises, as much of the money was used on themselves or work was prolonged in order to collect as much money as possible. It was also alleged that fake organisations had collected money, and that with pre-existing NGOs they had conducted media campaigns in the West which had implied that the GoSL was not helping its own people. The money collected by these INGOs was then not properly used, and when confronted about not fulfilling their promises, these INGOs had simply charged that the GoSL was not being cooperative. In addition, much of the funding that these INGOs

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<sup>55</sup> Jayasuriya, et al., ‘Post-tsunami Recovery’: pp. 16-17.

<sup>56</sup> Grewal, ‘Approaches to Equity’, p. 32.

<sup>57</sup> *Daily News*, ‘Tsunami Swindlers’, 31 July 2006.

<sup>58</sup> Bullion, ‘Peace Process in Sri Lanka’, p. 166.

had collected was said to have flowed to the INGO HQs and was not in fact used in Sri Lanka.<sup>59</sup> INGOs were ‘drawing on interest’ in the words of one article.<sup>60</sup>

The critique of the tsunami programmes also extended to the involvement of the European Union (EU). It was felt that the EU had not taken on board the fact that most INGOs were European and that it was the EU which had given them the money and thus shared responsibility for them, even if the GoSL could be faulted for the failure to ‘rationalise the utilisation of the tsunami funds and obviate malpractices’.<sup>61</sup> Thus the EU itself was also culpable. At the end of 2006 the European Union Parliament’s Overseas Development Committee Coordinator visited Sri Lanka and was quoted in the press as saying that EU funded INGOs would be called to a EU Parliament public hearing in Brussels to answer charges of being slow to implement housing reconstruction programmes, therefore bringing the EU into the discussion as an additional actor.

At the end of August 2006 the new head of RADA elaborated on the idea that unused monies should be given to the population directly so that they could build their own houses. Her plan to solve the problem of the funds not being properly used by the INGOs was for any unused funds to be given to the national treasury which would then ensure that the funds were given directly to victims of the tsunami who had yet had their houses reconstructed.<sup>62</sup> However the majority of INGOs did not agree with the plan. In a response to an article critical of their housing reconstruction progress, World Vision responded to this ‘Owner Driven Programme’ plan by saying that the agency ‘would find this unacceptable since the organisation is mandated to maintain their independence and are directly accountable to donors when implementing projects’.<sup>63</sup> This would have been the response of any similar INGO, as diverting donor funds directly to a host government for distribution would have been against standard accountability practices, as the donors hold INGOs responsible for the implementation of the agreed upon programme per contractual procedures and accountability mechanisms. Additionally, from a principled perspective INGOs consider themselves to be independent of the host governments when allocating funding. It is uncertain whether the head of RADA was unaware of these facts or whether she was simply playing to public opinion.

In summary, there was a great deal of dissatisfaction concerning the tsunami response shown in both the media and in government statements. The P-TOMS arrangement, though appreciated at the start,

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<sup>59</sup> *Sunday Nation*, 27 August 2006.

<sup>60</sup> *Sunday Observer*, 27 August 2006.

<sup>61</sup> *Island*, 12 September 2006.

<sup>62</sup> *Sunday Observer*, 27 August 2006.

<sup>63</sup> *Sunday Observer*, 10 September 2006.



was eventually discounted as it was feared that it would legitimise the LTTE. Some dissatisfaction was directed at the government's poor accountability mechanisms, but much of the criticism was focussed on the NGO response. The JVP was particularly angered at how NGOs had conducted themselves and their programmes. The procedures for collecting and distributing funds were criticised, as they were seen to be dishonest and ineffective. The response was also thought to be slow, especially related to housing reconstruction. The political response was first the establishment of the PSC, backed by the JVP, and then the establishment of RADA, which replaced P-TOMS. The Rajapaksa regime took on board much of these NGO criticisms, and government officials directly charged NGO with misconduct. By mid-2006 NGOs were under intense pressure by the political elites and the media concerning the tsunami response. The PSC was also stepping-up its investigation of NGOs. The discourse related to the tsunami response directly, or indirectly, associated the LTTE with humanitarian international agencies, and in the process the GoSL—LTTE—INGO adversarial triangle was strengthened. The LTTE and INGOs were both reinforced as enemies and the GoSL was pushed towards a further disengagement from these actors.

The second track to be discussed relates to the war and its effect on how NGOs were perceived and treated by the political elites, inside and outside the government, and by the media. If the GoSL—LTTE—INGO triangle was strengthened through association of tsunami response agendas with the LTTE, this triangle was hardened in relation to the conflict.

### 2.3. The War

War is not merely a background context for humanitarian agencies but its presence is one of the principal characteristics which defines a humanitarian crisis. The goal of humanitarian agencies is to gain access to populations affected by conflict in order to provide life-saving assistance to those in danger and need. This negotiation of access is conducted with the relevant authorities in control of a territory, in the case of Sri Lanka this had been with the LTTE in areas which it controlled and with the GoSL to gain access to these areas. As this study focusses on the relationship between the GoSL and MSF-H and how they negotiated access to conflict-affected populations over time, a close study of the Sri Lankan civil war is therefore essential in order to understand how this relationship was constructed.

Wars, especially civil wars, are politically very sensitive phenomena. The involvement of international actors in the midst of a conflict—the external attempting to work in the internal—makes for a politically complex situation. Although humanitarian agencies attempt to remain neutral by not

taking sides in a conflict, there are of course political implications to the presence of international actors whose objective is to engage with conflict-affected populations. In this sense humanitarian actors are often seen to be, and are treated as, political actors by host governments. But clearly there is a third actor to be factored into the equation besides the government and the humanitarian agency, and that is the rebel group which is at war with the government. The humanitarian actor will by necessity negotiate access with the rebel group if it controls territory. This turns a binary relationship into a triangular relationship. Each point on the triangle is not equally weighted, though, as the most significant relationship is that between the government and the rebel group. Humanitarian agencies interact with both but its role is not central to that relationship; not central, but that is not to say trivial. As the war progressed, humanitarian international NGOs often found themselves in the middle of a very tense adversarial relationship between the GoSL and the LTTE. As the government could not afford to ignore the political implications of the presence and work of humanitarian agencies, the GoSL had to find a process to manage them. It will be recalled also that the war did not occur in isolation from other processes, particularly those discussed above related to the tsunami. It should also be noted that the three points on the triangle were not monolithic. The Colombo political elites did not always agree on how to prosecute the conflict; the LTTE was not a monolithic whole but was also prone to faction formation; and not all humanitarian INGOs were alike in their mandates and methods. For this reason it will be important to tease out the internal discussions and contradictions within each node of the triangle related to the war. At the end of this discussion a comprehensive view of the triangle may be had.

The nature of the conflict changed over the 2005-2006 period. As was seen above in the review of the previous iterations of the conflict, there was a pattern of intense fighting followed by relative peace and a focus on talks followed by renewed fighting. It is interesting to note that Prabhakaran, head of the LTTE, indicated that the war would have re-started earlier if not for the tsunami.<sup>64</sup> Regardless, by late 2005 there had already been signs that there would be an escalation of the conflict. The government's 2006 military budget was 23% higher than the previous year, and in April 2006 the GoSL made a \$37.6 million deal with a Chinese arms dealer to supply small weapons and ammunition,<sup>65</sup> affirming that there was some consideration of the need to be prepared for a military solution to the conflict. The election of Rajapaksa was itself seen by many as an indication that the government was going to take a harder stance towards the LTTE, and the influence of the JVP and

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<sup>64</sup> de Silva, *Unresolved*, p. 100.

<sup>65</sup> Nath Yogasundram, *A Comprehensive History of Sri Lanka from Prehistoric Times to the Present* (Colombo: Vijitha Yapa Publications), p. 390.

JHU ensured this. The assassination of Foreign Affairs Minister Lakshman Kadirgamar (a Tamil) in August 2005 also set back the peace process and a state of emergency was called; as well, over 300 alleged violations of the ceasefire were registered by the SLMM in 2005.<sup>66</sup>

In many ways the period from late 2005 into early 2006 can be characterised as a continued stalemate, militarily and politically. The SLFP was at this time still supportive of the peace process and the JVP was arguing for a more aggressive prosecution of the war, but neither party had the upper hand and there was much uncertainty about how the conflict would progress. Initial peace talks were held in Geneva in late February 2006 and it was agreed to meet again in April, a date that the LTTE ultimately failed to keep. No direct peace talks had been held since 2003. Notwithstanding the large number of ceasefire violations there were no major movements on the military front in this period. The decision at this time by the EU to ban the LTTE elicited a response by the LTTE to force out the SLMM monitors who were from Finland, Denmark, and Sweden (all EU countries).<sup>67</sup> It was not until 8 June 2006 that the next peace talks took place, in Oslo, though the talks did not progress as the EU proscription and linked EU presence in the SLMM was a serious point of contention.<sup>68</sup> Within the coalition government tensions developed over how to handle the increasing violence. The SLFP and the JVP had differing views on the role of the military in settling the Tamil issue. Throughout early to mid-2006 the JVP increasingly applied pressure on the government to withdraw from the Oslo-arranged ceasefire agreement and to take concrete action to respond to the threat posed by the LTTE, such as by the use of military force.<sup>69</sup> But Rajapaksa at this time still requested from the LTTE proactive participation in the peace talks.<sup>70</sup>

An additional major development in the 2004-06 period was the breaking away from the LTTE by Vinayagamoorthy Muralitharan ('Colonel Karuna'), who went on to form an independent, then government-linked, fighting force. Karuna had been a high-ranking LTTE commander from the eastern area of LTTE control until he broke with Prabhakaran in 2004. The LTTE asked the GoSL to disarm Karuna's forces, which it promised to do but failed to follow-up on. Karuna formed his own faction—the Tamil People's Liberation Tigers—in March 2006. In retrospect this defection can be seen as the beginning of the end for the LTTE, as they lost territory, fighters, and also an important military commander. As will be seen the eastern theatre became highly implicated in the development of the conflict in 2006. Local elections were held at the end of March 2006, and for this reason

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<sup>66</sup> de Silva, *Unresolved*, p. 99.

<sup>67</sup> de Silva, *Defeat*, 181-82.

<sup>68</sup> de Silva, *Unresolved*, p. 103.

<sup>69</sup> *Island* 2 July 2006.

<sup>70</sup> *Island* 5 July 2006.

Rajapaksa could not abandon Karuna, as the JVP and JHU were challenging the SLFP and thus it was necessary for Rajapaksa to bolster his credentials by supporting an anti-LTTE Tamil force.<sup>71</sup>

Two other major security-related events occurred in this period which indicated that the LTTE were still committed to using terror tactics. In the first, at the end of April 2006, Lt. Gen. Fonseka, the head of the army, suffered grievous injury from an assassination attempt at his military headquarters in Colombo. He would not be back in his position until the end of July. And in the second, in June 60 people were killed as a result of an explosion striking a bus at Kebithigollewa, near the important Sinhalese historical site of Anuradhapura. The frequency and intensity of war-related incidents rose in July and August. A few of the most prominent are listed here to give the sense of the tenor of these months. On 1 August the LTTE attempted to sink a troop carrier with 800 on board near Trincomalee, in the midst of heavy fighting, including artillery and jet bombings, in the Sampur area. Trincomalee at this time was 'closed' because of LTTE attacks.<sup>72</sup> On 6 August a number of Muslim civilians were killed at Pachchanor by the LTTE who had alleged them to be members of the Muslim armed group 'Jihad'.<sup>73</sup> An attempted assassination of the Pakistan High Commissioner occurred in Colombo on 14 August. In quick succession in July and August the LTTE attacked Mavil Aru, Muttur, Mavil Aru a second time, and then renewed the fight for Jaffna. The LTTE wasn't pushed from Trincomalee until September 2006. The military campaign by the Sri Lanka Army (SLA), which had begun as a result of these incidents, lasted, in one form or another, until the end of the conflict in May 2009. These events drew international attention, with UN General Secretary Kofi Annan calling President Rajapaksa on 16 August and encouraging a resumption of peace talks and a decrease in the violence. As 2006 progressed the uncertainty of whether the CFA was still in effect had deepened. On 31 July a Trincomalee LTTE spokesman said that the LTTE had pulled-out of the CFA. The government responded that it was not obligated to respond as proper procedures had not been followed by the LTTE in pulling out of the CFA.<sup>74</sup> At the beginning of August the SLMM said that the CFA existed only on paper following the escalation of violence since December 2005, with at least 925 people having been killed since that time according to the SLMM.<sup>75</sup> Another source put the number of killed as a result of violence from December 2005 to August 2006 at 1,500.<sup>76</sup>

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<sup>71</sup> de Silva, *Unresolved*, p. 100.

<sup>72</sup> Norman Palihawadena, *Island*, 2 August 2006.

<sup>73</sup> *Asian Tribune*, 6 August 2006.

<sup>74</sup> *Island*, 1 August 2006.

<sup>75</sup> *Daily Mirror*, 1 August 2006.

<sup>76</sup> *Agence France Presse (AFP)*, 1 September 2006.

A major turning point in the conflict was the Mavil Aru anicut incident at the end of July 2006. The sluiceway (anicut) at Mavil Aru—a small irrigation project near Trincomalee—was closed by the LTTE on 21 July. The impact may have been major and long-lasting, but the waterway itself was small, though 1500 families—Tamils, Sinhalese, and Muslims, relied on water from the irrigation channel.<sup>77</sup> During the initial period the government's irrigation department tried to open the gates but were repulsed by the LTTE. It was reported that this forced the military to intervene to ensure that the channel could be reopened, a military operation which the government said was conducted on 'purely humanitarian grounds'.<sup>78</sup> An *Island* editorial from 28 July said that the GoSL had only three options to consider—give the area over to the LTTE; request assistance from the international community; or take military action. 'No sovereign state could consider the first option'; Norway and the SLMM had been appealed to in vain; so that left only the third, military, option, which included air strikes.<sup>79</sup> On 1 August the Defence Ministry spokesman, Keheliya Rambukwela, said that the government had no intention of turning the incident into a 'full-fledged' war, but was only responding to the needs of the population left without water. 'As a responsible government, we had no alternative'.<sup>80</sup> One interpretation was that the LTTE was trying to create a humanitarian crisis in order to involve the UN,<sup>81</sup> though it is unclear why the LTTE would have wanted UN involvement at this time. Clearer is that the GoSL did not want such international involvement. One voice asked if the international community had 'sincere intentions of contributing to their proclaimed humanitarian values', as humanitarian actors were 'legally and morally obliged to assist the GoSL in restoring water to the people affected in the Mavil Aru area'.<sup>82</sup> At the end of July the LTTE claimed that they had closed the anicut to protest their being banned by the EU.<sup>83</sup> On 7 August the LTTE offered to the Norwegians to open the sluiceway on 'humanitarian grounds', and then on or about 8 August the sluice gates were reopened, though it is unclear if the LTTE opened them unilaterally or the SLA took the area by force and re-opened them itself.

The Mavil Aru incident was important for two reasons. First, in retrospect the blockade of the waterway was in many ways the incident which pushed the conflict back into full-fledged war. And second, in combination with the ACF incident (in which 17 national staff were executed in Muttur on 4 August; discussed in detail below), which closely followed it and was also linked to the general

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<sup>77</sup> de Silva, *Defeat*, 182.

<sup>78</sup> *Daily Mirror*, 27 July 2006.

<sup>79</sup> *Island*, 28 July 2006.

<sup>80</sup> *Island*, 2 August 2006.

<sup>81</sup> *Island*, editorial, 5 August 2006.

<sup>82</sup> *Asian Tribune*, 7 August 2006.

<sup>83</sup> *Island*, 31 July 2006.

fighting in the area, the complexion of the humanitarian crisis and access for organisations to the area fundamentally changed.

Against this rise in violence the primary question, one which arose repeatedly in the press, was whether this was the end of the CFA and the start of Eelam War IV. A *Sunday Times* article entitled 'It's Eelam War IV: Trinco in danger', argued that the first week of August had seen the dawn of Eelam War IV. But, even if this were true, the article pointed out that 'there is still a bizarre paradox', as both parties in the conflict continued to indicate their commitment to the CFA.<sup>84</sup> And remembering that the outbreak of Eelam War III on April 29, 1995, had come after a guerrilla attack on the Trincomalee port, it seemed that events were repeating themselves. 'These developments have confined the ceasefire to a set of words on paper. The same with the Scandinavian monitors tasked to supervise it'.<sup>85</sup> As discussions in the press indicated in this period, the government was careful to not be perceived as desiring a full-scale resumption of the conflict. Yet the increasing role given to the military in the conflict, as opposed to diplomatic efforts related to the Norwegian mediated peace process under the CFA, was an important indicator of the potential for a renewed humanitarian crisis.

Paralleling the rise in violence was a concomitant serious deterioration in the human security situation, including massive displacement of conflict-affected. The University Teachers for Human Rights (Jaffna) (UTHR(J)), a Tamil human rights group, in a report entitled 'Hubris and Humanitarian Catastrophe', talked about the period from early August as witnessing three sets of humanitarian crises—displacement of more than 50,000 Muslims and Tamils from Muttur; 20,000 displaced Tamils south of Muttur; and displacement in southern Jaffna.<sup>86</sup> As such there was a continued need for an international response, if only for protection by presence. But there was debate in the press about who was actually providing aid, NGOs or the government. According to one report the displaced themselves said that they were not getting sufficient support from the government and that most aid came from NGOs. Understandably annoyed with such accusations, government officials 'accused NGO workers of distributing aid randomly and being more interested in posing for photographs with those they had helped' than actually providing aid.<sup>87</sup>

Though both sides of the conflict at times indicated that international aid would be welcomed and even encouraged, the sense in some international eyes was that neither side was allowing aid agencies

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<sup>84</sup> *Sunday Times*, 6 August 2006.

<sup>85</sup> Ibid

<sup>86</sup> University Teachers for Human Rights (Jaffna) (UTHR(J)), 'Hubris and Humanitarian Catastrophe', *Special Report* 22, 23 August 2006.

<sup>87</sup> *Sunday Times*, 13 August

to work. Local and international aid agencies had increasingly become the target of ‘threats, harassment and violence’ that was prohibiting them from assisting the populations in need.<sup>88</sup> The LTTE also appealed for aid to be given to the north-eastern Trincomalee district by international agencies, but claimed that the government was blocking them from doing so.<sup>89</sup> Yet in this period there were also criticisms in the press that NGOs were negligent by their absence. An *Island* editorial accused the major NGOs of being ‘conspicuous by their absence except for a very few’ in the response to the IDP crisis.<sup>90</sup> In addition, attacks on humanitarian organisations attempting to respond to the displacement crisis had increased. In this context a meeting was held at the Centre for Policy Alternatives, a Sri Lanka think tank, which produced a summary report on the humanitarian situation.<sup>91</sup> After describing the general situation—100,000 new internally displaced between April–August 2006, another 6,000 fleeing to India, a humanitarian crisis which needed an urgent response, it was concluded that ‘it is imperative therefore that NGOs and INGOs which have performed an invaluable role in the conflict and involved themselves in humanitarian activities at the time of the tsunami are able [to] continue to operate without hindrance’. The statement reviewed the security situation for NGOs and listed a number of security incidents over the preceding few months: Grenade attacks on the offices of ZOA, Inter SOS, and NVPF in Mutur which injured one international and two local staff members; a Claymore attack in Batticaloa which killed a ZOA staff member; the ACF massacre; three ambulances shot at—one in Puthukudiyiruppu, killing five, and two in Mutur, which killed three; and a hijacking of a Sri Lanka Red Cross ambulance in Mannar.

Throughout this period the government expressed alternating views about the role of the international community in relation to the conflict. At times the GoSL indicated that the international community should leave it to prosecute the war as it saw fit, and at other times it indicated that international actors should be more involved. The latter perspective was often taken when the GoSL was unable, or unwilling, to discuss with the LTTE the rules of conflict, such as when the government stated in July that it had expected that the international community would have put more pressure on the Tigers to stop using civilians for military purposes.<sup>92</sup> There were many examples of this dynamic triangle between the GoSL, the LTTE, and the international community. Four international entities were particularly troublesome to the GoSL during this period. The European Parliament held a debate at the plenary sitting of the parliament on cases of breaches of human rights, democracy, and rule of

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<sup>88</sup> *Daily Mirror*, 23 August 2006.

<sup>89</sup> *AFP* article as quoted in *Island*, 13 August 2006.

<sup>90</sup> *Island*, 10 August, 2006.

<sup>91</sup> Centre for Policy Alternatives, ‘Statement on Space for Humanitarian Work: Issues of Safety, Access and Restrictions’, Colombo (2006).

<sup>92</sup> *Island*, 3 July 2006.

law in Sri Lanka; the UN Under-Secretary-General for Humanitarian Affairs, Jan Egeland, cited Sri Lanka as a humanitarian disaster of immense proportions and indicated that it was a similar situation to Lebanon and Darfur, and also mentioned the killing of the 17 aid workers and the denial of access to aid workers to the conflict-affected areas; the UN special rapporteur on extrajudicial executions, Philip Ashton, stated that the situation had deteriorated significantly; and the ICRC expressed ‘deep concern’ about the humanitarian situation in the north and east. The ICRC Delegate-General for Asia and the Pacific, Reto Meister, visited the Jaffna peninsula and the Vanni region and made the statement that Jaffna was ‘choking’. A *Daily Mirror* article asked if there was a hidden agenda behind all of this criticism. ‘One can’t ignore the continued attempts by international organizations to give legitimacy to the LTTE and place them on par with the government. UN special rapporteur on extrajudicial executions while criticizing the LTTE for its killings lost no time in placing similar blame on the government’. It was often claimed that the international community was not as concerned with investigating the LTTE as they were in criticising the GoSL.<sup>93</sup>

In a very Schmittian way the GoSL was in a constant process of deciding who its friends and enemies were. The enemy of one’s enemy was a friend, at least temporarily. Foreign actors were routinely drawn into domestic political tensions, such as the LTTE requiring that monitors from EU countries leave because of the EU’s ban on the LTTE. The story told in this research is the how NGOs were drawn into this uncertainty through a process of the government first deciding on who were friends and who were enemies and then securitising those who were the latter, all in a context thought of increasingly as a state of exception. Against this general context of hope and despair, as it was expressed in one editorial,<sup>94</sup> and grave uncertainty over how the conflict would progress, 17 Action Contra le Faim (ACF) personnel were killed in Muttur. This event would have a major impact on both the security and access for humanitarian INGOs.

#### 2.4. The ACF Killings

The killing of the 17 ACF national staff members in Muttur occurred on 4 August. The workers, trapped inside their Muttur branch office residence because of the fighting in the area at the time, were shot and killed at point blank range.<sup>95</sup> As a result of the SLA bombing of LTTE positions during the Mavil Aru crisis, the LTTE had counter-attacked by taking control of Muttur. The ACF killing occurred at the point when the LTTE was pulling out of Muttur and the SLA was re-occupying the

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<sup>93</sup> *Daily Mirror*, 9 September 2006.

<sup>94</sup> *Daily Mirror*, 8 July 2006.

<sup>95</sup> *TamilNet*, 8 August 2006.



town. It is not the point of this section to make a judgement of who was to blame for the killings, but it is important to outline the two common views. On one side, Lt. Gen. Sarth Foneska, commander of the army, claimed that the SLA had nothing to do with the killings and laid blame on the LTTE.<sup>96</sup> On the other side was the view that the SLA or SLA-linked Tamil paramilitaries were responsible: One analyst thought that ‘on the face of it, the LTTE had no obvious reason to kill the ACF workers. On the other hand, the military and various Sinhala chauvinist organizations have frequently denounced non-government organizations (NGO) such as ACF, working in island’s [sic] war zones, allegedly supporting the LTTE’.<sup>97</sup> A letter written by Ulf Henricsson, out-going head of the SLMM, regarding who was to blame for the killings, caused a fire storm of reaction. The letter, outlining the findings of an internal investigation, stated bluntly that the SLA was responsible for the killings:

The killing of the 17 civilian aid workers in Muttur on the 4th of August 2006 is ruled as a gross violation of the CFA by the security forces of Sri Lanka ... the committed act of assassination has proved to be one of the most serious recent crimes against humanitarian aid workers worldwide and has been strongly condemned internationally. I urge the GOSL to take all necessary actions to immediately stop any kind of violence against the civilians of Sri Lanka and to do its utmost that the matter is thoroughly investigated by the Sri Lankan authorities.<sup>98</sup>

The international and domestic condemnation of the killings was quick and intense, although some researchers have asserted that the aid community ‘did not seize the potential watershed moment to re-negotiate the space and parameters of humanitarian action’.<sup>99</sup> Both the European Union Commission and the French Foreign Minister quickly condemned the killings. The Sri Lanka Human Rights Commission assigned two investigators to the case.<sup>100</sup> The Rt. Rev. Dr. Kingsley Swampillai, Bishop of Trincomalee-Batticaloa, also condemned the massacre.<sup>101</sup> The Sri Lanka National Council of Jurists called for an independent investigation by ‘completely objective and highly competent people’.<sup>102</sup> The UN Special Representative on Human Rights Defenders, the UN Special Rapporteur on Extrajudicial Executions, and the UN Special Representative on the Right to Food, released a joint statement urging the GoSL to publish the findings of the investigation; targeting civilians was a ‘serious violation’ of human rights and humanitarian international law.<sup>103</sup> In a BBC report reprinted in the *Island*, Jan Egeland, the UN’s Emergency Relief Coordinator, stated that it ‘was unacceptable

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<sup>96</sup> *Island*, 13 August 2006.

<sup>97</sup> Shantha Ajithan, *World Socialist Web Site*, as quoted in the *Asian Tribune*, 13 August 2006.

<sup>98</sup> SLMM letter to Dr. Palitha Kohona, Secretary General SCOPP concerning the ACF killings (2006).

<sup>99</sup> Niland, ‘Sri Lanka’, p. 5.

<sup>100</sup> *Island*, 11 August 2006.

<sup>101</sup> *Island*, 12 August 2006.

<sup>102</sup> *Island*, 13 August 2006.

<sup>103</sup> *AFP* article as quoted in *Island*, 13 August 2006.

that the government had not provided any explanation regarding the execution' of the ACF workers and that 'we cannot continue in this area unless people will be held accountable for the execution of 17 of our colleagues'.<sup>104</sup> In the initial ACF reaction Benoit Miribel, Director General of ACF International Network, said in a statement that 'we take this tragedy as the beginning of something new'.<sup>105</sup> ACF called it a war crime.<sup>106</sup> President Rajapaksa in November 2006 set-up a presidential committee to investigate the ACF killing and 15 other incidents, inclusive of a board of international experts, but they soon withdrew due to government interference. In its final report 18 months after the killings ACF did not assign blame but did state that there clearly was a cover-up and no justice had been seen in the case.<sup>107</sup>

The point of the above list of reactions is to demonstrate how seriously the incident was taken, by both domestic and international actors. A less publically discussed incident may have swiftly blown over, but the ACF incident could not be ignored and created a cascade of reactions by a number of Sri Lankan and international actors, all of which informed subsequent GoSL policies on INGO access to the conflict zones.

The GoSL's response to any accusation of blame was robust. Minister Rambukwella, MoD spokesman, 'slammed' Henricsson for 'issuing a totally biased and unprofessional ruling' and went to great pains to explain in detail why Henricsson's verdict was incorrect.<sup>108</sup> Another report quoted Media Minister Anura Priyadarshana Yapa as saying that 'the government was conducting a thorough investigation and it was not correct for the SLMM to jump to conclusions'.<sup>109</sup> A Sri Lanka Peace Secretariat press release was also highly critical of Henricsson: 'The head of SLMM has based his ruling on 'speculation' and 'innuendo' in an unfortunate attempt to bring disrepute to the Sri Lankan Security Forces'. And importantly, 'given the international engagements of the President at the time, the selective timing of the SLMM ruling and its motives are extremely questionable'.<sup>110</sup> Nefarious objectives were being insinuated against such international actors. International actors, on the other hand, took the accusations more seriously. The French Embassy in Colombo made a statement that it wanted to be kept informed of the progress of the investigation, as 'the French

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<sup>104</sup> *Island*, 1 September 2006.

<sup>105</sup> *Island*, 12 August 2006.

<sup>106</sup> Statement issued by Benoit Miribel, Director General of ACF International Network, August 2006.

<sup>107</sup> Miribel, 'Statement'.

<sup>108</sup> *Daily News*, 31 August 2006.

<sup>109</sup> *Island*, 1 September 2006.

<sup>110</sup> *Sunday Observer*, 3 September 2006.

government has taken note of the report of the Sri Lanka Monitoring Mission signed by the general Henricsson'.<sup>111</sup>

Discussions in the press quickly turned to the question of changes to access and security for humanitarian agencies because of the ACF killings. An example is a *Sunday Leader* article which discussed the fact that the government had not yet 'given the green light for unrestricted access to relief workers into LTTE controlled areas'. Minister Rambukwella stated that 'we have to be extra careful in allowing aid workers into the conflict areas as the situation is very intense'. The article said that the killings had raised serious concerns in the minds of international aid organisations. 'We cannot put their lives at risk', the minister concluded.<sup>112</sup> An opinion piece published six days after the ACF killings in the *Daily Mirror* brought forward a number of issues surrounding the ACF incident. It was understood that NGOs were increasingly facing security threats, though 'their work represent[ed] a critical component of development activity in the country'. Interestingly, the piece sympathetically noted that NGOs had to obtain work permits, pay taxes, cooperate with the PSC when asked to, and 'contend with ad hoc strictures such as producing permits from the Ministry of Defence or allied agencies to permit their travel to the North and East'. Such a system had existed before the CFA, but the CFA should have 'freed everyone including NGOs of these shackles'. And now they had to contend with security threats and suffer physical violence against them, such as the ACF attack, abductions, and arrest if they didn't have the proper paperwork. Thus, 'it is as if war has been declared on NGOs too. The perception of their detractors are that INGOs help the LTTE directly or indirectly, are working in an area where war demands exclusion as a policy, are having a good time, [are] dishonest or not too transparent and waste valuable philanthropic resources'.<sup>113</sup> But in the view of the author of the opinion piece this was not the case. This is a good summary of the environment INGOs were working in in the middle of August, but also a reminder that not all press reports were aggressively anti-INGOs. Was there space for INGOs to desecuritise themselves?

### III. Summary

The July to October period is at the heart of the story and in many ways the most difficult period for the actors involved with this narrative. To paraphrase the narrative thus far as based on the documents analysed, it was a time of no peace talks, no peace, uncertainty whether the CFA was dead in practice if not in name, and increasing fighting. Politically it was a tense time as there was a constant

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<sup>111</sup> *Island*, 2 September 2006.

<sup>112</sup> *Sunday Leader*, 27 August 2006.

<sup>113</sup> *Daily Mirror*, 10 August 2006.

jockeying for position vis-à-vis the political ramifications of the conflict which was widely considered to be moving into the Eelam War IV phase. In the press during this period NGOs were increasingly accused of misspending tsunami funds and even embezzlement. Funds were said to be cynically collected on sympathy for the tsunami victims. And did NGOs, especially INGOs, really do anything valuable? Hadn't the response really been led by local actors, such as temples? NNGOs and their heads were particularly under fire. As fighting intensified NGO security became a more actively discussed topic. There was deep suspicion of the NGO role in LTTE areas and concern that many NGOs were not being properly monitored. Where did all the money go that was given to them? Why not give unspent money to the government so it can give it directly to the people? Most agreed that there was a need for better NGO regulations to rein in NGOs and their extravagant lifestyles. The EU shared responsibility for European INGOs and the poor and slow tsunami response. Yet there was increasing violence and a developing IDP crisis. What was the role of the international community and INGOs specifically regarding the war response? Was there a remaining role of the CFA in granting INGO access? But how to keep the INGOs safe? The ACF killings were condemned, the government said that it was doing all it could to find the culprits, and did not appreciate being blamed for the killings. To many in the political elites, and increasingly in the MoD, INGOs were becoming more trouble than they were worth and what was needed was a crackdown on their access.

In the search for friends and enemies one can see that the friends were the Sinhalese political elites, specifically the political actors guided by security and political concerns—the GoSL, and in this period specifically the SLFP government of prime minister and then President Rajapaksa, and the Sinhalese and Buddhist nationalist perspectives of the JVP and JHU. The enemies were those who threatened national security, the existence of a unified state, and the political dominance of the government, so both the LTTE and NGOs (both national and international), which were perceived to be linked with the LTTE or at least its undesirable agenda. Note that the self was not a stable entity as it was a coalition government which changed over time—the SLFP had to deal with the JVP, and also the JHU, and then at a certain point the centre of gravity shifted towards the UNP.

Not surprisingly, the major process influences were the conflict and party politics at least on the national level. The conflict can be broken down into the peace process--the status of the CFA and peace talks; and military events—the Mavil Aru anicut incident and the increase in fighting in the east, then in the north, as well as the ACF killings. Party politics can be broken down into the status of the coalition between the SLFP and the JVP, and the closely related presidential and parliamentary elections held in the period leading-up to the study period. The tsunami was relevant for how it was reacted to, specifically related to the PSC. To a large extent the reaction to the behaviour and

performance of NGOs was guided by the political situation. The political reaction to the tsunami response led to a certain negative view of NGOs and a desire to investigate and regulate NGOs. At the same time the conflict track also instigated a negative response to NGOs. On the part of local NGOs the negative view was more related to their perceived lack of neutrality, but even this had a political angle as many were considered to be politically unreliable.

The role of identity in this process of differentiation should be emphasised. The identity of the self was as much an issue as the identity of the other. Each party involved had to reflect on their identity and prioritise action which protected this self-identity. Sometimes also an actor would decide on actions based on an understanding of the identity of the other where it was felt that that identity was threatening to it. Identity then was a sub-structure which informed the political acts and, as will be seen in the next chapter, a sub-text which permeated the securitisation discourse. The next chapter will add to the above analysis an examination of the process of securitising the enemy, what practical actions the GoSL took in response to the perceived INGO threat, followed by a review of the actual practice—how other organisations and specifically MSF were dealt with by the government.

## **Chapter Four**

### **Securitisation and Praxis**

#### **I. Introduction**

As a first step towards unravelling how the relationship between the Government of Sri Lanka and MSF-Holland developed, the preceding chapter examined the political and military events of 2005-2006 and how they influenced the government's positioning towards NGOs. The work and identity of international NGOs, particularly those engaged in humanitarian operations in the conflict areas, was increasingly being questioned by the Colombo-based political elites. By elites is meant political party elites, business leaders, influential Buddhist monks, newspaper editors, and influential public intellectuals. Both the quickly developing political and military situation and the pre-existing dissatisfaction felt towards NGOs from the post-tsunami reconstruction period informed the government's actions and the political discourse. The environment for NGOs was also increasingly characterised by insecurity as the conflict heated-up. The dynamic relationship between the government, the LTTE, and international actors can be visualised as a triangle, a triangle created by a domestic political process of designating who was friend and who was enemy, which was itself based partly on debates about identity. Increasingly over 2006 the context of war created a state of exception where the government allowed itself to step outside normal administrative and legal processes in an effort to prosecute the war as it saw fit. This was a discursive process of securitisation.

As a way to conceptualise this process of securitisation this chapter outlines a number of dichotomies related to the evolving relationship between the GoSL and NGOs in this context: Principles versus practice; Western versus Asian; LTTE or Sinhalese/Muslim; government versus NGOs; foreigners versus Sri Lankans; and Sri Lanka versus the international community. Such dichotomies securitised NGOs by articulating the reasons why they should be considered undesirable. The dichotomies backed-up and supported the understanding of the self and other, friends and enemies, with a discursive structure. At the end of this chapter this process will be reviewed in practice through a discussion of the experiences of the ICRC<sup>1</sup> and MSF-Holland.

As a reminder, securitisation is understood to be the process of using speech acts to designate an actor or an issue as a security threat which necessitates a response outside normal legal and

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<sup>1</sup> The following discussion also includes the ICRC although as discussed earlier it is not an INGO.

administrative practices. The securitisation process has a particular structure. A 'referent object' is said to be threatened in its existence, justifying a 'securitising actor' to implement extraordinary actions to ensure the security of the referent object. The issue, which has been identified as the security threat, is then 'moved out of the sphere of normal politics into the realm of emergency politics, where it can be dealt with swiftly and without the normal (democratic) rules and regulations of policy-making'.<sup>2</sup> There are three steps to the process. First is the identification of the existential threat; second, the implementation of the emergency actions taken to counter the threat; and third, the management of the effects of the emergency actions on the relevant political relationships.<sup>3</sup> The last point involves the explanation and justification of the emergency actions.

But what is an existential threat? 'To present an issue as an existential threat is to say that: 'If we do not tackle this problem, everything else will be irrelevant (because we will not be here or will not be free to deal with it in our own way)''.<sup>4</sup> The securitisation process 'socially and politically construct[s]' the threat to which must be responded.<sup>5</sup> One of the central points is to ensure that the meaning of the threat is clear and that the issue itself is no longer debated—it is put outside the political process and its handling is speeded-up by procedures which may violate standard norms and laws.<sup>6</sup> The inverse process—desecuritisation—is also important, whereby securitisation is reversed and issues are moved out of 'the threat—defence sequence and into the ordinary public sphere' where they can be dealt with in accordance with the rules of the democratic political system.<sup>7</sup> The end of the 2006 period will see a partial process of desecuritisation begun by MSF-Holland.

In this case study the securitising actor was the state, or more properly the government which represented the state, as only a government may enact emergency measures. Yet the instigation for the actions of the securitising actor was as much the responsibility of the political and social elites more broadly, as was witnessed above in the discussion of the domestic political dynamics related to the aftereffects of the tsunami and the prosecution of the war. Identity discussions played a major role in this process, as politics and identity cannot be separated. The referent object—the thing being threatened—was, alternately, national security, the sovereignty of the state, the unitary nature of the country, or the Sinhalese Buddhist identity of the country. In reality the threats associated with this

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<sup>2</sup> Rita Taureck, 'Securitization Theory and Securitization Studies', *Journal of International Relations and Development*, 9:1 (2006), p. 54.

<sup>3</sup> Buzan, et al., *Security*, p. 6.

<sup>4</sup> Buzan, et al., *Security*, p. 24.

<sup>5</sup> Taureck, 'Securitization', p. 54.

<sup>6</sup> Buzan and Hansen, *Evolution*, p. 214.

<sup>7</sup> Barry Buzan, quoted in Taureck, 'Securitization', p. 54.

situation were multi-faceted, but the specific securitised issue this study is concerned with is the involvement of INGOs. The audience—the political community which must be brought on board—was the general public and the international community. The audience was also the state itself as well as the political elites at the centre of the political process, as there is often a need for justification to the self in such a process.

Securitisation is a discursive process and therefore these steps as described are implemented through the use of discourse. Before analysing the discourse itself it should be reiterated that it was not only the government which was responsible for the production of discourse but the Colombo political, social, and religious elites also played a large role in setting the semantic tone of the period. This discourse was often derived from deeply embedded identity beliefs. Indeed, without deep background knowledge it is difficult to understand what discourse was instigated by the government and what was produced by other religious and cultural actors. It is in fact not clear how relevant INGOs felt this distinction to be, though this study argues that the most nuanced analysis possible better enables a desecuritisation process. The common outlets for discourse as analysed by international agencies were the media, especially the arguments made and language used by editorialists and columnists.

The next chapter will examine how MSF-H specifically interpreted this discourse. The task in this chapter is to present the background to the discursive context and to closely examine the discourse used in the media in the second half of 2006. To review, this analysis of the discursive context fits into the analytical structure as used in this and the preceding chapters as outlined below:

- *Differentiation*: Creating difference between the self and others by distinguishing between friends and enemies. This has been discussed in chapter three.
- *Organisation*: How were the messages organised? The next section deals with this.
- *Meaning*: What was meant to be understood? The next section also deals with this.
- *Action*: What were the actions the messages justified? What was done—or planned to be done—based on the messages? Reviewed in the section after next.
- *Practice*: How was the discourse ‘done’? Through what means was discourse conveyed? This is dealt with in the last section.

## **II. Securitising the Enemy: Organisation and Meaning of Messages**

The organisation of the securitising messages can be thought of as a set of dichotomies. These dichotomies are a way to conceptualise the discursive context rather than as a way to assign intention. These are also only examples of such dichotomies and not a comprehensive review of the discourse of the period. Each is based on a pairing of concepts in tension which helped to define the self and



other and explain why the other was worthy of harsh handling. In examining these examples relevant newspaper articles must be quoted from extensively in order to demonstrate how language was actually used. As described above, a wide variety of newspaper sources were investigated and each period was researched in-depth. The point should be re-emphasised that it is sometimes difficult to know if the authors or government spokespeople were referring specifically to local NGOs, INGOs, or all NGOs, but it is argued that, from the perspective of creating a critical discursive environment surrounding the working of NGOs, it mattered little which sub-set was the target.

It is also extremely difficult to disentangle the genesis of some of the discourse, as it was not only the government which was responsible for the production of discourse but the Colombo political, social, and religious elites also played a large role in setting the semantic tone of the period. This discourse was often derived from deeply embedded identity beliefs. In practice questions can be asked whether the discourse was derived from agreed upon government policy and discussions, or was it solely reflective of the opinions of individual governmental authorities? Was it created by the columnists, editorialists, and journalists themselves, either because it was what was understood to be a 'correct' interpretation of events, and thus governmental authorities would be appreciative? Or were the opinions and language independently derived and then picked-up for use by the government? As will be seen through the discussions below, it is clear that it was a combination of all of the above.

Regardless, given the limitations for any researcher who is an outsider studying such a sensitive political environment, it is impossible to process trace the behind-the-scenes generation of political discourse. Although this is a methodological limitation, it is moderated by the perspective this research takes that it was the general discursive atmosphere which most informed INGO decision-making, as negotiations were based on discourse, and how discourse was understood, rather than intimate knowledge of political decision-making.<sup>8</sup> In practice the common outlets for discourse as analysed by international agencies were the media, especially the arguments made and language used by editorialists and columnists.

Therefore the dichotomies as described below were created based on a careful study of the available discourse of the period. Each dichotomy is illustrated by one or two examples, as much as possible involving direct communications by governmental authorities. Many more examples could be

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<sup>8</sup> This is not to say that this is the preferred approach to negotiations, only that this was the lived reality for INGOs negotiating access with the GoSL at this time. It is difficult to argue that a deeper knowledge of behind-the-scenes political decision-making would not benefit an INGO in their negotiations; only that it is unrealistic to expect that a INGO would have such insight.

examined for each theme, but for the sake of space only the clearest cases have been chosen for detailed examination and are meant to be generally illustrative of the designated dichotomies.

## 2.1. Dichotomies

Dichotomies are here used as analytical tools, as a way to structure discourse. These dichotomies are the blocks upon which to construct a theoretical edifice. This thesis will not delve into an ontological discussion of the philosophical or metaphysical status of dichotomies. Their use is restricted to their epistemological value.<sup>9</sup>

### 2.1.1. Principles Versus Practice: Wastefulness and Greed

This dichotomy deals with the difference between what NGOs were seen to be doing in practice and what they should have been doing in principle (as it this was understood). Many editorials and articles spoke about funding issues, accusing NGOs of not using funds for their intended purposes.

Instead of using collected funds productively to assist with the tsunami reconstruction effort, NGOs were accused of ‘feasting’ on the funds they had collected.<sup>10</sup> Fernando, the outspoken head of RADA, was often critical about NGOs’ wastefulness and their ‘extravagant lifestyles’.<sup>11</sup> She was quoted in an interview as saying that communities, concerning housing reconstruction in particular, were ‘rightfully impatient and often angry’ at NGOs, especially when they saw the abundant funds NGOs had collected from developed countries being used in ‘living it high, entertaining extravagantly, travelling in luxury vehicles, paying themselves astronomical salaries and lavish allowances’.<sup>12</sup> She also claimed that such NGOs spent more than 40% of the tsunami funds on themselves, their travel costs, and their own administration.

One common explanation for this phenomenon was simply greed on the part of NGOs. An *Island* editorial entitled ‘Humanity, what crimes are committed in thy name!’ said it clearly: ‘The bogus claims in question point to how NGOs are abusing the concessions they have been given for carrying out humanitarian work in the tsunami hit areas’. It said that most NGOs were ‘having a field day at the expense of the tsunami victims’, and that ‘some NGO activists thriving on human misery, have the audacity to call the tsunami waves *rattaran jalakande* (‘waves of gold’)’<sup>13</sup> There were some

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<sup>9</sup> It should be admitted at this juncture the underlying influence of Hegelian dialectical materialism in the dependence on dichotomies in the analysis.

<sup>10</sup> *Sunday Nation*, 27 August 2006.

<sup>11</sup> *Asian Tribune*, 24 September 2006.

<sup>12</sup> *Ibid*

<sup>13</sup> *Island*, editorial, 8 July 2006.

good people who were in earnest in their desire to help and the state should support them. But most aid was a 'racket', and people in such greedy NGOs were like the 'human vultures that descended on corpses and stripped them of gold chains and other valuables in the immediate aftermath of the disaster'.<sup>14</sup> On the peace front it was also a debated question whether NGOs were actually in earnest in their desire to work for peace or whether the motivation was related to profit. 'One wonders whether there is money to be made out of this anti-war front. After all conflict, their management and resolution are today's big business. Hundreds of foreign and local NGOs thrive on conflict and conflict related issues. More conflict the better. No conflict, well start one'.<sup>15</sup> Money issues were often brought into the critique as a way of condemning agencies.

NGOs, therefore, even if they said that they were present to care for the people suffering from disasters or the war, or were working towards peace, actually were only out for their own gain. The clear impression left through such discursive practice was that NGOs operated on a profit and gain basis rather than being earnest in their desire to assist people, the underlying assumption (rightfully) being that a truly humanitarian or peace building organisation would not be interested in profit or extravagant lifestyles. Thus this dichotomy pitted the principle that NGOs should selflessly help others, against the observed practice that NGO workers were greedy.

#### 2.1.2. Western Versus Asian: Imposition of Western Agendas

This dichotomy relates to Western mental habits versus the 'Asian way'.<sup>16</sup> Very often there was an implicit, if not explicit, message that Western organisations did not understand the Asian context. The next chapter will demonstrate sympathy for this view as MSF-H struggled to understand the Asian way. The organisation, in fact, considered this understanding vital to properly analysing the context.

One complaint was that Western models were imported by Western organisations to solve local problems when their relevancy or effectiveness had not been tested in the Asian context. Thus such organisations were not really accountable to the people, even though they claimed to speak on their behalf. In one commentator's view, the genealogy of the involvement of Western charity workers started with Christian missionaries in the colonial period who came to Sri Lanka to civilise the

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<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> The term 'Asian way' was used by MSF-H in its documentation in this period and meant the perceived ways in which communication and discourse was managed in an Asian context, particularly related to the perceived indirectness of communications.

natives.<sup>17</sup> Modern day NGOs were a continuation of this breed of Western colonisers. NGOs acted as if they were ‘a supra-state, supra-society and supra-people body sitting on top’ of local structures. He spoke specifically about what he referred to as ‘politicized NGOs’, which were those which had come under particular criticism from ‘traditional societies’. ‘Despite their claim to be do-gooders they are perceived, rightly or wrongly, as a threat to traditional societies putting their best foot forward to come to grips with the realities of modernity’. Some saw NGOs as intermediaries between the government and communities and that this was seen in a positive light as it helped keep governments ‘in check’. But then others ‘consider it [the rise of NGOs] as the inviable hand of Western neo-liberal agencies that haunt the globe’ and as ‘the behemoth that tends to usurp the powers of the state by dictating national agendas without any responsibility for the consequences of their interventionist actions’. On this view these Western agendas were not sensitive to the local context and ill-fitted to traditional societies, such as were found in Asia.

Many more examples of Western organisations being labelled as neo-colonialist or acting as representatives of undesirable Western traits could be given, as these were common themes. The perspective as presented in the above example was clear. Western organisations, as being foreign, could not understand the Sri Lankan, or Asian way of doing things. And worse, they tried to impose their own ways of doing things on Sri Lankans. The Western identity of most INGOs then was both suspect and detrimental to their ability to fulfil their mandates. It should be mentioned that even NNGOs which were foreign funded were often made to fit into this dichotomy.

### 2.1.3. LTTE or Sinhalese/Muslim: Who is Supported?

This dichotomy relates to whether NGOs were supportive of the LTTE, and Tamils in general, or were on the side of the Sinhalese, or in some case the Muslims. In most formulations it was an either/or choice, as with being a friend or an enemy. Either one was with you or against you.

One illustrative article criticised the NGO community as ‘these humanitarians who remain stoic when the LTTE is barbaric but can’t keep their pants on if by any chance the striped sweethearts get bitten in their behinds; they talk about the government acting too hastily, being too quick to launch military strikes’.<sup>18</sup> And this was no apologist for the government, as the Rajapaksa regime was described as being ‘muddle-headed and unprofessional’ in most matters. But in the case of not bowing down to

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<sup>17</sup> H.L.D. Mahindapala, ‘What is Civil Society?’, series of articles published in the *Sunday Observer*, 30 July, 6 August, and 13 August 2006, collectively entitled: ‘The New Salvation Army of the NGOs: A Sri Lankan Case Study’.

<sup>18</sup> *Sunday Nation*, 17 September 2006.

LTTE demands in the midst of the Mavil Aru anicut closure, the government was right and the NGOs were wrong in not taking a tougher stand against the LTTE. Instead of talking about the consequences of the closure on the population, the NGOs ‘talk[ed] about the 17 employees of a French NGO who were murdered in cold blood, allegedly, according to them, by the security forces’. But they were also not talking about the 300 Muslims who had been ‘butchered in cold blood by the LTTE in Palathoppur’. Being concerned with the plight of the Muslims didn’t fit into the Tamil propaganda of persecution so they were ignored and therefore sandwiched in between the LTTE and the government. ‘A delicious tidbit isn’t it for our terrorism-laundering NGO fraternity’.

The question ‘whose side were NGOs on?’ was then a common question and the answer that NGOs were working in support of the LTTE was a dominant theme. Mostly the stories referred to NNGOs with foreign funding, but it is suspected that this distinction was lost on many. In an editorial from the *Island* on 4 September an issue with the Tamil Relief Organisation (TRO) was discussed.<sup>19</sup> The TRO was officially a NGO but was widely considered to be the ‘humanitarian arm’ of the LTTE. The editorial explained that the government was determined to ‘battle the LTTE on all fronts’, including by freezing the funds of the TRO, which was a LTTE front organisation operating ‘behind the façade of humanitarian assistance’.<sup>20</sup> It is baldly stated, and this is a common theme, that ‘there are several other NGO arms of the LTTE, masquerading as human rights or peace building groups ... For such an organisation [the LTTE] buying some NGO activists and making them dance to its tune is child’s play’. The LTTE needs to fight on all fronts, including the NGO front, so NGOs like the TRO, ‘together with fellow NGOs, funded by foreign powers sympathetic to the LTTE, are trying to run a parallel government in the south. They have come to pass as the so-called civil society and spread their tentacles all over society’. Even some members of the press were considered to be ‘comfort women to their NGO paymasters and help[ed] peddle their not-so-hidden pro-terror agendas’.<sup>21</sup>

As stated above it was not always clear whether discourse referred to NNGOs, international NGOs, or both. Often it seems that even the authors were not clear in their minds as to which they are referring. Most often the reference was in fact to a nebulous NGO of uncertain providence. Regardless, these NGOs were assumed to be supporters of the LTTE. This made NGOs suspect from the start, as from the standpoint of the Colombo political elites the LTTE were, quite unreservedly, the enemy. The flip side of this perspective was, logically, that such NGOs were not sympathetic to

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<sup>19</sup> *Island*, 4 September 2006.

<sup>20</sup> *Island*, editorial, 4 September 2006.

<sup>21</sup> *Island*, on 4 September 2006.

the Sinhalese cause or willing to provide assistance to the Sinhalese or, at times, to the Muslim population.

#### 2.1.4. Government Versus NGOs: Who Was in Charge?

Who was responsible for maintaining humanitarian space? One columnist elaborated on what was described as a ‘classic whine’ by someone from the INGO world.<sup>22</sup> The ‘whine’ was the line of reasoning that the CFA did not require work permits for humanitarian actors working in the north but regardless they were being required even though the CFA was still in operation. Then: ‘reserve your guffaws for this’, as it is explained that the INGO representative was reported to have said ‘this is not justifiable. It is unfair. The government can’t say that the CFA is in motion and then do something in violation of the provisions of the CFA’. The writer is incredulous and asks if the INGO people think that ‘the CFA is our constitution, just as others of their tribe believed that the tsunami was nothing but the announcement of an open season to do the vini-vidi-vici number economically, politically and culturally?’ Whatever the CFA said it did not give ‘dubious outfits’ with ‘dubious agendas’ the right to do whatever they wanted. Then the crux of the issue: ‘does it mean that governments cannot say ‘no’ to something if they feel it is not in the better interests of the population?’ Not all NGOs were up to nefarious activities but then again not all were above-board either. ‘We are talking ‘national security’ here, ladies and gentlemen of the INGO-NGO community. Not all of you are ‘innocents-abroad’ and we know that’. And as a conclusion:

A lot of INGO work in this country makes me want to say ‘if you want to help us, give us the money and leave’. If they [INGOs] don’t trust the trustees of such funds, then smile, say hello, commiserate with our suffering and leave. If we have recovered to any extent from the tsunami it is because we did what we could for our fellow citizens. If we someday sort out the menace that is terrorism, I am inclined to think it will be on our own.

The tone notwithstanding, the question was a valid one. Was it the responsibility of the government or the NGOs to decide on the parameters of humanitarian action? From the perspective of the NGOs the answer was both, each in its own way, and independently of each other. But this idea was not always supported by the government. It was especially galling when what was seen to be an internationally managed ceasefire agreement was used by an international NGO to try to force a particular type of action, or non-action, on the formal political authorities of the nation.

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<sup>22</sup> *Sunday Nation*, 13 August 2006.

#### 2.1.1.5. Foreigners Versus Sri Lankans: Who Deserves Compassion more?

Were foreigners more caring for themselves or for the people of Sri Lanka? An editorial directly analysing the significance of the ACF killings is illuminating.<sup>23</sup> The ACF murder was ‘justifiably a traumatic event for the NGO community. The NGOs have taken almost personal umbrage against this act of outrage, which is reprehensible by any standards’. But, ‘there is almost a sleight of hand in trying to pass off a horrendous crime without any reference to the broader perspective of the current state of the conflict’. The author talked about the fact that 100 Muslims were ‘massacred by the LTTE’ the week before [a number which was not proven though often stated], ‘but there was no condemnation by the NGO community, which has however, voiced a collective scream of agony over the death of their aid workers. The rationale may be that their aid workers are kindred—and that the Muslims are but civilians who got in the way’. The article also relates the story of a three-year-old who had died the week before because of a LTTE bomb. The author asked if international aid organisations weren’t ‘repulsed’ by such acts. ‘Or is it that aid workers lives are more sacrosanct than the lives of three year olds, or those of Muslims fleeing violence?’ No life was more sacrosanct or death more venal than another. ‘But, all lives are sacrosanct, and all attacks on civilians are reprehensible, and this is a fact that is not brought into perspective in condemning the murders of aid workers alone’. As such, ‘the death of the aid workers should be condemned, but not in isolation, but with reference to the broader contours of a conflict that should take into account attacks, counter-attacks and genocidal campaigns, all in proper perspective’. NGOs have therefore lost their humanitarian perspective and failed to express compassion objectively.

What is interesting to note here is the importance of condemnation. The bias of an organisation was being gauged through its discursive practices. In this case it was noted that there was more condemnation of the killing of fellow NGO workers than of different types of civilian sufferers, the conclusion seeming to be that NGOs cared more about their own than civilians, the civilians which they were purportedly there to assist. They did not abide by the author’s standard that all life was sacrosanct.

#### 2.1.1.6. Sri Lanka Versus the International Community: Sovereignty and Dignity

What was Sri Lanka’s place in the international order? And therefore what was the proper role for the Sri Lankan state vis-à-vis international actors? A fascinating article published in the *Sunday*

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<sup>23</sup> *Sunday Observer*, editorial, 13 September 2006.

*Nation* spoke about sovereignty and the concept of dignity.<sup>24</sup> The theme is outlined by the statement that ‘there are some who argue that sovereignty in the purest sense is meaningless in today’s world’. The author gives a standard definition of sovereignty and concludes that sovereign states did not exist, if they ever existed at all, given that the definition included the idea that states should have the right and power of regulating their internal affairs without foreign interference. He asked if the term was any longer useful, and answered yes, it still was, as ideal types were useful to determine degrees (in the Weberian sense). Sri Lanka was only an island in a geographical sense. ‘We are not just part of a global system of exchange, but a relatively insignificant entity in a complex network of social, economic, political, cultural and military power ... In short, we cannot and indeed are not allowed to do as we please in designing and implementing policy retaining to our internal affairs’. And so politicians, regardless of the rhetoric they used, had to kow-tow to representatives of the international community. But, ‘the absence of sovereignty does not mean that a nation or a people are slaves, have no agency, and need to suffer all manner of insults to dignity and self-respect without a murmur. This is why it makes more sense to talk about dignity than sovereignty’. It is suspected that the discomfort the author felt may have related to bruised dignity more than an honest fear that sovereignty itself was being eroded, though some commentators did express valid fears of this.

This article went on to say that, though powerless in some ways, Sri Lanka was not altogether without the ability to exercise control:

While we can and should protest and take measures to deal with the arrogance of certain NGO personnel and other foreign actors and the assumptions they entertain about their roles and jurisdiction, we cannot ignore the fact that they are here and they obtain legitimacy because we don’t do what we can and should do.

Though the ‘bona fides’ of organisations such as ACF should be questioned, ‘the fact that 17 citizens of this country were killed in cold blood should be seen as an insult by all of us, individually and collectively’. Summary execution of civilians is ‘an affront to the dignity of the very people in whose name the fighting is done’, for ‘if a country that demonstrated unbelievable generosity and admirable capacity to respond to tragedy when the tsunami struck cannot respond to the inevitable humanitarian crisis precipitated by hostilities, then we as a nation should grieve at how unjust, unthinking and callous we are’. The argument concluded that Lanka did not have the ability to recover its ‘absolute sovereignty’, but it did retain a sense of dignity. If the political community compromised this dignity it would have compromised on what mattered most ‘in terms of nationhood, in terms of being citizens

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<sup>24</sup> *Sunday Nation*, 3 September 2006.



who are heirs to a civilisation and have a right to imagine a different and more benevolent future'. Dignity then should be the focus rather than an untenable sovereignty.

The relationship between the Sri Lankan polity and the international community was a balancing act; a balance between rights and responsibilities; between sovereignty and international obligations; between smallness and largeness; and between sovereignty and the desire to assist. Some thought Sri Lanka had every right and the means to control international actors on the state's territory—the external in the internal, but some were more pragmatic in their views and saw the limitations in a small country's ability to maintain pure sovereignty. And on this view the issue was about dignity rather than sovereignty.

## 2.2. Meaning

To review, these dichotomies were described: principles versus practice; Western versus Asian; LTTE or Sinhalese/Muslim; government versus NGOs; foreigners versus Sri Lankans; and Sri Lanka versus the international community. Such dichotomies securitised NGOs by articulating the reasons why they should be considered undesirable. The dichotomies backed-up and supported the understanding of the self and other, friends and enemies, with a discursive structure. What was meant to be understood about the self was that it was committed to the maintenance of a unified Sri Lankan state versus the foreigners who were against the state and the Sri Lanka view of nationhood. The state was desperately trying to maintain its sovereignty and dignity against foreign interference, and demanded that it be remembered that the state held the responsibility of national security as opposed to the NGOs who were greedy and irresponsible in their actions and were not on the side of the Sinhalese majority. There was a Western conspiracy against Sri Lanka and Western actors did not understand the Asian other. Humanitarian actors had to understand the political and security realities that the state had to contend with. The others were thus undesirable at best and a threat at worst. This discourse not only gave these messages to NGOs, but helped justify the actions taken by the government against the freedom of action by NGOs. These actions are the focus of the next section.

## 2.3. Action in a State of Exception

### 2.3.1. The Discursive Environment: Confusion or Intent?

The discursive contextual background and the securitisation process have been reviewed. The next step is to examine what actions were actually taken by the government to restrict NGO access. The last chapter presented how the self and others were understood and friends and enemies designated

by the Sri Lankan political elites and how this understanding changed over time. The last section looked at how meaning was organised and what was meant to be understood. This section looks at the actions which were taken by the political and military authorities within the political, military, and discursive environment described thus far. The final section will look at these actions in actual practice.

The most important issue concerning action was the increasing involvement by the Ministry of Defence in administering NGO access to the conflict zones. This part of the story will also be told through a discussion of a series of media reports on the subject, all mainly derived directly from governmental sources. This use of media sources is for two reasons. The first is that there are no (accessible) government documents relating specifically to this issue, for reasons which will become clear through the discussion. And second, in order for MSF-H's reactions to be properly contextualised, it must be understood how information was conveyed through the media as it was this process of sharing and response which was the basis for how relationships were constructed between the government and humanitarian international agencies. The essential role of discourse in the construction of such relationships must be remembered. This is not to argue that discourse is always coherent and clearly presented. The narrative as presented below is a good example. The story is confused and contradictory. The question is was this a result of clever manipulation of the discursive environment, or was it a discursive representation of a confused and incoherent political process? The narrative will be displayed in chronological order to emphasise the difficulties in properly constructing the chain of events. This is as INGOs would have been exposed to the discourse and the actions it was meant to explicate and justify. At the end of this section the disjointedness of the narrative will be analysed and discussed.

### 2.3.2. The Narrative: July to October

At the end of July 2006 in the midst of the heightened military tensions there were indications that INGOs were becoming increasingly suspect as reliable actors and new more restrictive administrative procedures were being put into place. As only the two armed actors could substantially influence the development of the conflict, INGOs were at the mercy of the changing situation and had to adapt to survive. The new organisations implementing tsunami response activities would not have been fully aware of the dynamics the conflict was creating in the LTTE—GoSL—INGO triangle, though longer-term organisations, especially those which had gone through other iterations of the conflict, could better understand the meaning of governmental discourse. The tensions of the triangle were acknowledged by an unnamed government official from RADA who told the *Island*

that INGOs needed to ensure transparency about their staff and resources in order to avoid suspicion being levelled at them by both the military and the LTTE.<sup>25</sup> The official indicated that some INGOs were complaining about insecurity, but that in such a situation of increasing violence it was simply a fact that there would also be increased suspicion of ‘non-conflicting parties’. As this was a reality which needed to be faced, such parties had two choices—remain or leave. If choosing to remain they had to attend to their security protocols and look to policies which would reduce the level of suspicion they faced or else they would become ‘sandwiched’ between the two parties in conflict. For this official the key was transparency and liaison. INGOs had to show the ‘genuineness in their operations’. For INGOs such as MSF-Holland the clear decision was to stay and attempt to carve out space within which to operate, though as time progressed this became more and more difficult to achieve as the conflict heated-up and the MoD became more proactive in its involvement with humanitarian access.

As a result of the fighting in the north and east in July and August thousands of civilians had fled and INGOs had tried to access the affected areas. Access, though, was increasingly being denied. For the first time the MoD administered work permits were an operational concern. Security personnel at the Omanthai crossing point (the crossing point between GoSL and LTTE controlled zones) had refused NGOs from crossing unless they had work permits. Most INGOs did not have these work permits, and those that didn’t were sent back to Colombo. As part of the new administration procedures, ‘on a recommendation by the Social Welfare ministry, the defence ministry has written to the Immigration and Emigration department with a copy attached to the Inspector General of Police (IGP) that the visas of the INGO representatives must be revoked within 48 hours if they failed to produce work permits’.<sup>26</sup> The list of involved governmental agencies was impressive. Any international agency wanting to work in the north and east had to acquire a work permit from the MoD in addition to their normal visas. The question of INGO access to the conflict areas was a developing topic and decision-making by the GoSL, particularly the MoD, was in flux. What was clear at this time was that the MoD was demanding that INGO personnel acquire new work permits from the MoD in order to access the conflict zones of the north and east. INGOs were given until 31 August to comply.

A statement by the Centre for Policy Alternatives as reported in the *Daily Mirror* late August goes into detail about the story of the MoD permits. The message was that there was confusion about the

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<sup>25</sup> *Island*, 6 August 2006.

<sup>26</sup> *Sunday Nation*, 6 August 2006.

work permit issue and it was causing delays in INGOs getting access to the areas in need of assistance. Therefore the MoD needed to expedite the issuance of permits before the 31 August deadline after which it would be impossible for international staff to work in conflict areas without them. ‘Faced with so many challenges, humanitarian agencies are increasingly questioning their ability to function, raising the likelihood of them limiting their presence and even a complete withdrawal’.<sup>27</sup> Recommendations were made by the CPA to the MoD: Ensure the safety and security of humanitarian organisations; clarify the legal environment around the MoD permits; and quicken the process of issuance of permits by making it more efficient and transparent. And to the LTTE it was also recommended to ensure the security of humanitarian and medical staff and provide for ‘an enabling environment to carry out their activities’. As can be seen the situation was very confused, as little was clear about these MoD work permits. Although the deadline for obtaining them was said to be 31 August, as early as the beginning of August access was being refused for those INGOs personnel who did not have them. The parameters of the work permits were also unclear, such as whether they were only necessary for INGOs or were also needed by local NGOs.

One of the justifications for any added administrative controls in this period of increasing military activity, particularly after the ACF killings, was the need to help protect INGOs. Yet a government statement concerning INGO security by the Human Rights and Disaster Management Minister Mahinda Samarasinghe reported in the *Daily Mirror* said that ‘NGO workers in the North and East cannot expect security from the government’. He continued that, ‘while the government was grateful for the valuable humanitarian work carried out by the agencies it couldn’t provide protection to the aid workers’. As with the earlier discussion about security, the minister said that the decision to remain in the conflict areas was solely up to the NGO employees operating there, but if any incidents occurred the government would carry out impartial investigations to it.<sup>28</sup> As if to prove his statements, a *Daily Mirror* article from the next day reported on a Consortium of Humanitarian Agencies (CHA) (a national grouping of NGOs) statement that more than 2,000 humanitarian workers had decided to pull out of the conflict area and that those pulling out had been requested to hand over their belongings to the military authorities.<sup>29</sup> The picture painted was one of confusion, uncertain regulations, insecurity, and massive movement of NGO personnel from the conflict areas, exactly as one would expect in a state of exception. As governments were usually understood to be responsible for humanitarian actors on their territories, whether national or international, it was a

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<sup>27</sup> *Daily Mirror*, 21 August 2006.

<sup>28</sup> *Daily Mirror*, 25 August 2006.

<sup>29</sup> *Daily Mirror*, 26 August 2006.

disturbing indication of the exceptional quality of the situation that the government was warning NGOs that it was not responsible for their security. Were the new regulations to discourage NGOs from working in the conflict areas? Or were they, and the warning about security, meant to encourage them to leave the country?

A *Daily Mirror* article at the end of August stated bluntly that the government was on a 'collision course' with NGOs. According to the CHA police were visiting the offices of several NGOs asking them to register with the MoD by the end of August. The head of CHA told the paper that 'the police requirement for individuals to renew their work permits by 31 August has got mixed up with a need to register with the Defence Ministry'.<sup>30</sup> In response, the Defence Ministry Minister Keheliya Rambukwella said that the MoD had decided to register aid groups as it was 'the right of the government to have a record of the aid groups working in the country'. Linking together the previous tensions over the tsunami reconstruction response and the new tensions over NGOs working in the conflict areas, he mentioned that 'after the tsunami there were some NGOs who made a business out of it while there were others who did good work'. The article then mentions that the ICRC and the UN were still allowed access to un-cleared areas without permits or registration. Following on this at the end of August the president instructed the government spokesman at a National Security Council meeting to 'set the record straight' regarding the government's new INGO policy.<sup>31</sup> The reason was the recent contradictory reports and the protests by the CHA. In response the spokesman said that the policy was that all INGOs should register with the MoD and that all supplies should be handed-over, temporarily, to the MoD if an INGO left the area and would be handed-back to the INGO in Colombo.

Yet far from setting the record straight this attempt only added to the confusion. Was there a difference between registering with the MoD and obtaining work permits from them? In Batticaloa District some INGOs had suspended operations after food convoys had been blocked by the SLA.<sup>32</sup> The SLA had asked the INGOs for their MoD registration numbers in order to cross from GoSL into LTTE areas. Discussions were held between a local NGO representative, a local police official, and the local military civil-military representative about whether national NGOs were exempt from the restrictions. The local police said that they were carrying out orders from above to check all NGOs. The SLA stated that national NGOs could indeed still operate without registration, INGOs though needed to register with the MoD and then also obtain permission to operate from the police in each

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<sup>30</sup> *Daily Mirror*, 28 August 2006.

<sup>31</sup> *Daily Mirror*, 29 August 2006.

<sup>32</sup> *TamilNet*, 31 August 2006.

district in which they wanted to operate. Confusingly, the article ends with the statement that MoD officials were currently visiting international and local NGOs to check on their MoD registrations. Adding to the muddled story, an report in the *Daily News* said that on 31 August the government had ‘reiterated that it had not imposed any restrictions or control on NGOs operating in the North-East areas’.<sup>33</sup> The defence authorities had simply wanted an account on the assets pertaining to NGOs operating in the North and East and therefore had given NGOs a deadline of 31 August to register with the MoD. Some NGOs had ‘fled’ the conflict areas due to the ‘escalating violence’, and as such the MoD said that it had a right to know about these NGOs and that if they evacuated they should inform the security services. If they didn’t then there was a risk that their assets would come under the control of the LTTE, a major concern for the MoD. This was then why the government had requested NGOs to give a detailed report on their activities and assets. Interestingly, the MoD was afraid that in the eventuality that the LTTE took over assets from departing NGOs, the NGOs would ‘put the blame on the government’. So, to sum up, the MoD spokesman said that ‘the government has not imposed any restrictions on these NGOs preventing their humanitarian activities. What actually happened is that these NGOs have pledged [fled] the North-East due to the violence situation’, and that the MoD is ‘aware that some NGOs in the North-East are working with terrorists’. This statement ends with a criticism of NGOs and their tsunami response, saying that after the tsunami struck many NGOs had arrived and pledged \$30 billion, but that not even 15% of the pledged monies had been fulfilled, and that in fact some NGOs were not even still active in Sri Lanka.

In this murky period another article stated that the government had ‘enforced new controls on foreign aid workers after the ACF murders’, which aid officials had alleged had been perpetrated by the security force.<sup>34</sup> NGOs had been told to get work permits for expats by 1 September but the deadline was extended by a week. ‘An official of an international charity said the authorities had also begun harassing their staff in the aftermath of the accusations’. The article claimed that 500 expatriates had applied from around 90 NGOs but none had yet received permits. A Ministry of Defence, Public Security, Law and Order press statement from a couple of days later indicated that expatriates working for INGOs as well as NNGOs would be issued work permits ‘in due course’.<sup>35</sup> It went on to say that there ‘is no need for NGOs and INGOs to register’ with the MoD as ‘the authority for such registration is vested with the Ministry of Social Services’. Vehicles also didn’t need to be registered. The MoD was only involved with the issuance of work permits as a security measure. Personnel from

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<sup>33</sup> *Daily News*, 31 August 2006.

<sup>34</sup> *AFP*, 1 September 2006.

<sup>35</sup> *Sunday Observer*, 3 September 2006.

the UN and agencies attached to embassies, such as USAID, and registered commercial companies, were not affected. The press statement was meant to clarify the situation but quite the opposite it created even more confusion and contradicted MoD statements from even a few days before.

At the beginning of September it was unclear what the actual regulations were and what the ‘price’ of access was. It was also unclear under what legal framework the new regulations were being decided. Under whose authority were the MoD actions taken? Were decisions being made by the president, as minister of defence, or were they derived from internal MoD policies? The state of exception was in full flower in this period with governmental interlocutors tasked with interacting with INGOs seemingly acting in *ad hoc* ways without any concrete references made to normal legal and administrative procedures. The securitisation process had allowed for action against the designated enemies and this was the result in practice.

At this point the EU asked the government to ‘clearly set out the requirements for NGOs to be active in the North and the East and to speed up the process of issuing work permits with efficiency and transparency’.<sup>36</sup> An *Island* editorial, though, commented that the government had set out the guidelines and had given NGOs ‘four months or so’ to provide all necessary information to obtain security clearance. But no NGO had yet complied. To understand the behaviour of the GoSL, ‘the security concerns of the government should be appreciated in that the LTTE is dependent on foreigners in its war’.<sup>37</sup> The security angle was emphasised, but from the state’s perspective: ‘The military is of the view that mercenaries could enter the LTTE-held areas under the guise of NGO workers’. The government at this time said that it was to ‘call for a more positive role’ from INGOs ‘in the interest of humanitarian requirements during the present crisis period without succumbing to the pressures of single organisation that prevents them from fulfilling their role’.<sup>38</sup> The government was also considering the dissolution of RADA, transferring powers to the Government Agents (the highest level local governmental authorities at the district level) since the INGOs have not fulfilled their task during the current crisis period.

This brings the narrative back around to the idea of INGOs as being both incompetent and threatening to the political order. In an effort to clarify its policy and to defend itself, the government had, through the media, said that it had earlier in the year called on NGOs and INGOs to provide ‘basic information like who man’s their offices, from where they are and what the nature of their work was, how long

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<sup>36</sup> *Island*, 12 September 2006.

<sup>37</sup> *Island*, editorial, 12 September 2006.

<sup>38</sup> *Daily News*, 12 September 2006.

they have been in the country, what projects have they completed and the total strength of their staff and their backgrounds'.<sup>39</sup> After three months, it was claimed, there had been no response, forcing the government to extend the deadline by another month, after which there was still no information forthcoming. The Foreign Ministry had also been involved and attempts had been made to cancel the visas of the offending INGOs. During this period the media was primarily used to communicate the need for submission of such data by organisations. A criminal investigation department investigation had 'revealed alleged efforts by officials of a certain INGO to contract the LTTE to 'remove' an Additional Secretary of the Defence Ministry who is believed to have blocked the work of this organisation'. The MoD asked the MoFA to cancel their visas. 'The government it appears has turned its lethal guns away from the LTTE and is now gunning for crooked officials of INGOs and other UN agencies which are a threat to national security'.<sup>40</sup> Regardless of the process which had, or had not, been outlined by the MoD earlier in the year, the fact remained that at this time there was continued confusion about the requirements, with MoD statements often contradicting themselves. Access was being severely affected as a result.

At the end of September another actor communicated its intent to become involved in the registration process, the North Western Provincial Council (NWPC), the council responsible at the local level for the conflict areas which were under GoSL control. In fact, as part of the process of obtaining approval for its work, MSF-H had to have the NWPC sign its registration materials. At an illuminating meeting in September the NWPC discussed the NGO issue and unanimously decided to control the NGOs functioning in the province.<sup>41</sup> There were, so the council believed, 1400 NGOs working in Sri Lanka—according to one of the UNP representatives—and 'no one knows what they are up to. They perform according to their own agendas'. In the opinion of the UPFA representative:

We see several NGOs functioning as the agents of the capitalist countries to exploit our resources. Several other NGOs are supporting the terrorists, while some others are converting the Buddhists and Catholics unethically to another Christian Sect. They spend lavishly to achieve their ends. Such NGOs are very dangerous. They endanger the national security and the religious harmony that exists in the country for centuries.

A JVP representative stated that NGOs were 'so powerful that they are able to change even the government's policies'. And of course most supported the LTTE. Another UNP representative on the NWPC said that several NGOs did good work and they should be commended, but some were indeed threatening national security. The SLMC representative stated that no NGOs were assisting

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<sup>39</sup> *Sunday Nation*, 17 September 2006

<sup>40</sup> *Ibid*

<sup>41</sup> *Daily News*, 27 September 2006.



the Sinhala and Muslim populations in the current crisis, but that if it had been Tamils they would all have been active. Finally, another JVP representative said that NGOs ‘follow no rules and operate arbitrarily’; ‘NGOs play havoc in the country disturbing law and order’. It was a very grave situation to which the council needed to respond.

What is interesting about this discussion is that it was never specified what sort of NGOs were being discussed, or whether the criticism concerned national or international NGOs. The council members also fundamentally misunderstood the nature of NGOs if believing that they would act in any way besides based on their own agendas. The last topic on the table during this dynamic council meeting was to decide what to do about the NGOs now that they had been properly characterised as a threat. The Provincial Minister of Agriculture, Lands and Irrigations said that he doubted if the council could control the NGOs by ‘merely passing’ a proposed motion to control NGOs. There were no legal provisions in the motion, so he suggested that the council needed to obtain the legal powers to adopt measures to properly control NGOs. One of the UNP representatives agreed and suggested that ‘the power and authority of supervision of their activities and auditing their financial transactions [should] be vested under the Provincial Council’. The final word went to the Provincial Minister of Health, Sports and Youth Affairs, who said that the ‘activities of NGOs are not second to those of European invaders’, and that they had a hidden agenda even if some did good work. The motion was passed that NGO activities should be controlled by the NWPC. As can be seen, this council meeting brings together most of the discursive dichotomies discussed above, and in doing so NGOs were roundly criticised and characterised as a threat which had to be dealt with. It did, though, indicate that in some cases the legal basis for NGO control was considered important to clarify.

One last issue which was mentioned repeatedly in press reports was that NGO expats illegally came into the country on tourist visas. Herath, the head of the PSC, in October had a meeting with Sri Lanka Ambassadors/High Commissioners to discuss this issue and gave suggestions on how to tighten-up the procedures.<sup>42</sup> This involved the Sri Lankan High Commissioners in the country where the INGOs were located to conduct a comprehensive investigation of the INGOs before they sent the visa applications on to the Ministry of Foreign Affairs in Colombo. For ‘politically sensitive’ areas, such as the conflict areas, the MoD was also to be involved in the vetting process. This is the period that MSF-H, and other agencies also, had particular problems with administration procedures and that the PSC was the most active.

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<sup>42</sup> *Sunday Times*, 8 October 2006.

The MoD work permit and registration issue was a clear case of a confusing and unworkable system. It is impossible to say if it was meant to be so—whether the confusion was deliberate or not. But the upshot was the creation of a very difficult context for INGOs. Before examining the process in practice a pause will be taken to discuss the significance of what has been uncovered thus far.

#### 2.4. Discussion

One of the most intriguing questions related to the narrative as presented above was whether the confusion and incoherence was indicative of governmental agencies hard-pressed to manage a fluid and dangerous situation, or whether it was planned and orchestrated. This study will not be able to determine which was the case, though it would assist securitised agencies to know which was the case as this would provide good insight upon which to base a desecuritisation process. What can be concluded is that a securitisation process did occur. It is argued that a securitisation process need not be coherent to exist or even to be effective. Examining the narrative, in fact, shows that it is possible that incoherent discourse related to actions themselves may be more effective as it adds confusion to the discussion which is difficult for the actors securitised to respond to effectively. Confused actions leave those effected unsure about how to respond as they are unsure as to what they are responding to. But if the actions themselves were not clear, the fact of there being a threat was reinforced.

This is not to say that there was no logic to the threat designation process. The government was vulnerable both domestically and internationally. Domestically vulnerable on two counts—through pressure by the functional actors and the concerns for national security because of the war. The two were interlinked as the concerns of the functional actors were of course also related to the war. Internationally there was also concern related to the government's actions during the war which added another layer of threats to be reacted to by the government. A mix existed of political, societal, and military sectors on both the domestic and international levels. The GoSL had to react to this situation by painting a negative picture of the threatening agents, which were (partly) decided to be INGOs. Action had to be taken and the weak spot for agencies was access. This indicated visas, work permits, and access to the conflict zones themselves as areas which could be exploited to weaken the position of INGOs. The incoherence began at this stage of the process. What is clear is that it was the MoD which took the lead in this as the MoD was both directly under the control of the executive and was the department which was the most intimately involved with the conflict zones themselves. The other governmental agencies became involved when other aspects of INGO presence became important, such as immigration issues. When INGOs were thought to have crossed a line the police could be brought in to give the securitisation process a legal sheen. The involvement at a certain

point of the NWPC is interesting as it demonstrates a deepening institutionalisation of an anti-NGO perspective. Each level of government progressively involved themselves with monitoring and regulating NGO activities. This was also shown with the involvement of the PSC which in certain ways became engaged in aspects of NGO regulation and policing which were outside its purview. Regardless, as time passed boundaries of actions were expanded by an ever increasing list of governmental agencies—not only in terms of rhetoric but also actions. The general picture is one of sometime *ad hoc* and often extra-legal governmental actions by a wide variety of departments to severely constrain the work of INGOs. If the actions taken and proposed by the government were confused, contradictory, and often incoherently related, the fact of INGOs being considered threats and needing to be managed aggressively was not in doubt.

### **III. Praxis**

This section will examine the practice of designating enemies and securitising them through discourse. To put the above discussions in greater context, and to not leave the impression that only MSF or INGOs were termed enemies and securitised through discourse, here will be presented one mini-story concerning the ICRC before the MSF story is examined. Many organisations, and types of organisations, had problems with the government, including the UN and the ICRC, which as the guardian of International Humanitarian Law is a humanitarian international organisation with a formal legal mandate and a semi-diplomatic status. The ICRC story relates to its difficulties in negotiating access with both the LTTE and the GoSL. The story is also illustrative of the international legal dimensions of humanitarian action, especially when there are political and military agendas at stake.

#### **3.1. The ICRC story**

The ICRC story revolves around the problems the ICRC had in delivering assistance to the north after the A9 road had been closed. The process of negotiating security guarantees with both the government and the LTTE became quite difficult. The ICRC was the most active humanitarian international agency in the conflict areas in this period and was mentioned in the press frequently, mostly in a positive light until the ‘ship story’ began, which is as follows.

According to the Disaster Management and Human Rights Minister, a chartered Indian ship flying the ICRC flag—a practice which would assure both sides that the shipment was not a military threat to them, would the last week of August carry humanitarian supplies to Jaffna, something he claimed

to have arranged himself.<sup>43</sup> Security guarantees had been arranged, referring to ensuring that there were no military supplies on the ship, and thus the need for ICRC's involvement and the Red Cross flag. From the LTTE's perspective they had also agreed to the shipment, but not necessarily to the sea route. The distribution of food items in Kilinochchi would be handled by the Divisional Secretary and 'the LTTE would not interfere in the distribution process'.<sup>44</sup> The ICRC was seen as a neutral and trustworthy actor who could play a facilitation role in such operations. For example, the ICRC had been able to facilitate the crossing of the Omanthai entry/exit point—the crossing point between LTTE and GoSL zone, in many difficult circumstances.<sup>45</sup> The ICRC had also been able to send a ferry to assist with the evacuation of hundreds of foreign nationals trapped by fighting in the north, including international aid workers and Sri Lankans with foreign passports.<sup>46</sup> An ICRC press release from early September stated that the agency was 'deeply concerned' about the humanitarian situation in the north and east and it warned that continuing fighting was 'rendering the task of aid agencies especially complicated and dangerous', but thanks to its longstanding record as a strictly humanitarian and neutral organisation the ICRC thought itself generally known and accepted by both parties to the conflict, which enabled it to gain access to people in need on either side of the front lines.<sup>47</sup>

It was at this time that the problems with ICRC's involvement with naval transports came out in the press. The government had decided to convene a meeting with international agencies and to call for a more positive role from INGOs. This decision 'was taken following the ICRC's refusal to escort the Navy vessel transporting around 800 civilians trapped in Jaffna to Trincomalee due to the closure of the A-9 road'.<sup>48</sup> To the GoSL the ICRC had 'succumbed to the pressures of the LTTE' by refusing to escort the vessel under the ICRC flag and therefore refused to facilitate the humanitarian mission of the navy. 'The Government maintains that all INGOs operating in the country should work according to the Government requirements in the event of a humanitarian crisis and they should follow the instructions given by the Government and not by the LTTE as in the case of ICRC'. On the same day the LTTE's view on the ship issue was brought to light via a letter from the political head of the LTTE to the ICRC. The LTTE said that it was 'fully committed to the articles of the Geneva Convention and the customary laws that are applicable to non-international conflicts which

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<sup>43</sup> *Island*, 20 August 2006.

<sup>44</sup> *Island*, 24 August 2006.

<sup>45</sup> *Island*, 23 August 2006.

<sup>46</sup> *Island*, 25 August 2006.

<sup>47</sup> *Island*, 8 September 2006.

<sup>48</sup> *Daily News*, 12 September 2006.

are referred to'.<sup>49</sup> It continued that the LTTE has always abided by these customary laws and articles and that they would not fire on humanitarian convoys on the land passage, meaning the A9 road. But, 'rather than take up this option, you have requested our authorisation for the sea transport of essential items. Allow us to register our position and concerns about such a project'. The LTTE argued that the CFA did not include specific articles about 'demarcation lines at sea', and thus the sea access issue remained a problem for them. 'Under these circumstances it is not possible for us to provide protection to ICRC sponsored ship using these seas'. The issue concerned the route of the aid operations, rather than the fact of them.

The bone of contention was that the ICRC had suspended supply ships to Jaffna following warnings by the LTTE and also reluctance by the government for the A9 to be used.<sup>50</sup> The ICRC was caught in the middle between the LTTE and the GoSL on the access routes to deliver humanitarian assistance. The sticking point was whether the A9 land route was taken or the delivery was made by ship. The LTTE did not want the sea route taken, as it by-passed their territory, and the GoSL was set on the sea route for that very reason. The ICRC was understandably dissatisfied with the situation. The ICRC Deputy Head of Delegation gave an interview to the *Daily News* and stated that 'the government and the LTTE are both contravening their obligations under humanitarian international law by continuing to impede supply lines to the northeast'.<sup>51</sup> But the article added: 'However the government last week reacted angrily to the ICRC's claims, denying that it was contravening any humanitarian international laws adding that if at all, it was the relief agencies that were going against humanitarian covenants'. Minister Rambukwella was quoted as saying 'I regret to say that the ICRC has refused to fly their flags on the government ships transporting food to the civilians in Jaffna. It is the ICRC that is not taking part in transporting the food to the civilians. So who is breaking the law?' A hand grenade exploded outside the ICRC office in Jaffna on 30 September.<sup>52</sup> It was unclear who was responsible for the attack.

The government response to the ICRC situation was illustrative of how the government could quickly change its views of agencies. Rambukwella 'lambast[ed]' the ICRC over the ship case.<sup>53</sup> He said that the ICRC had refused to facilitate the aid ships on 'the flimsy excuse that they would carry the ICRC flag on ships only if both the government and the LTTE agree to do so'. He claimed that the LTTE had refused in order to cause a shortage of food in the north as a way to embarrass the

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<sup>49</sup> *TamilNet*, 12 September 2006.

<sup>50</sup> *Sunday Leader*, 17 September 2006.

<sup>51</sup> *Sunday Leader*, 1 October 2006.

<sup>52</sup> *Daily News*, 2 October 2006.

<sup>53</sup> *Island*, 7 October 2006.

government and so that they could ‘tell the world that the government was discriminating against the Tamils’. As such, ‘this is a gross violation of international norms on humanitarian missions’ and the ICRC’s action was tantamount to indirectly supporting the Tigers. He asked ‘whether the ICRC is here to do ‘humanitarian’ work or spadework for the LTTE’. But then at the end of October a story in the *Island* reviews quite extensively and in a very positive light the most recent ICRC bulletin.<sup>54</sup> The GoSL’s relationship with the ICRC had apparently gone back to normal.

The point of relating this story is to show that even a well-respected agency, which was trusted by both sides and had a good track record with negotiating with both the government and the LTTE, could get into trouble with the GoSL over access issues. In this case the ICRC, the government, and the LTTE all used international law to justify their actions and to criticise the actions of others. Even with negotiations conducted in advance and agreement made by both parties on the general solution to the problem, in the details the intervention broke down. Such situations were not unusual in a context of conflict, but it was the harsh reaction and language used by the GoSL that was striking. The ICRC was caught in the middle between the two armed actors and when the humanitarian operations it was involved with went against the military agenda as set by the GoSL the ICRC was quickly securitised through discourse. The government could turn on an agency and label it an enemy very quickly.

### 3.2. The MSF Story: Background

From the end of September into the first half of October 2006 there were a number of accusatory media reports regarding MSF. At this point in time it had become clear to MSF that there was a serious problem with its relationship with the Sri Lankan authorities. The purpose of this section is to present these accusations. As with the above sections press stories will be quoted as the media was the primary platform for the securitisation process, a process which was implemented through the use of discourse. In order to analysis the MSF-H response in the next chapter the accusations and discourse MSF was exposed to in the study period must be presented.

The MSF story in fact begins with an incident involving Medicos Del Mundo (MDM), for as will be seen there was much confusion between MDM and MSF in the minds of many local actors. A *Sunday Times* article from late August related the incident.<sup>55</sup> The Medicos Del Mundo-Spain (MDM Spain) Head of Mission had been blacklisted and deported from the country at the end of July. The reason

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<sup>54</sup> *Island*, 30 October 2006.

<sup>55</sup> *Sunday Times*, 27 August 2006.

for this was that MDM had issued a certificate to participants at the end of a training programme which had borne the emblem of the government of Sri Lanka alongside an LTTE emblem. To the GoSL this was an unacceptable legitimisation of the LTTE. Though deported at the end of July the Head of Mission had returned to the country on a tourist visa and had been deported again, according to the Controller of Immigration and Emigration. This issue of an international agency using the state symbol alongside that of the LTTE was also brought before the Parliamentary Select Committee for review. An official from the Ministry of Health told the PSC that a set of guidelines would be developed for all NGOs 'under the signature of the Presidential Secretary in order to avoid such incidents in the future'. As mentioned MDM and MSF were often confused in the press and it will be seen how this incident eventually involved MSF.

In late September four INGOs were accused of 'clandestine dealings' with the LTTE and as such they posed 'a threat to national security'.<sup>56</sup> The Parliamentary Select Committee recommended that the visas for personnel from 'MSS France (sic), MSS Spain (sic), MDM France and Doctors of the World USA' be withdrawn as the members of these organisations had been found to be supporting the LTTE. In addition the defence ministry had 'confirmed that they had been warned by the select committee about the clandestine activities of these INGOs, who, under the pretext of engaging in rehabilitation work, particularly in the North and the East, had been supporting the Tigers'. Based on the MDM incident the Immigration Department had also warned that those whose visas had been withdrawn could try to return to the country as tourists 'to continue helping the terrorist outfit'. A representative of the Parliamentary Select Committee said that somewhere between 30-40 INGO members had already been deported from the country in the recent past. In this report MSF was specifically mentioned, though it was mistakenly referred to as 'MSS France'. The specific claim against 'MSS France' was that the agency had been critical of the fact that the defence ministry had in the past withdrawn the visas of their personnel and that the agency had even 'sent threatening letters to the Defence ministry officials over action taken against them'. There was, in fact, no basis for these accusations, as MSF-France had not had a staff deported up until that time. This confusion in the press was considered by MSF to be simply a case of mistaken identity.

A variety of other accusations were made against MSF and other French INGOs at this time. Connected with the above confusion was the report that another French NGO, which one it was not clear, had been accused of displaying the wording 'the Ministry of Health and Department of Health Services of the LTTE' on a flag flown on their vehicles alongside the emblem of the Sri Lanka

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<sup>56</sup> *Island*, 30 September 2006.

Government while operating in LTTE controlled areas. The similarity with the MDM case should be noted. Any visible sign of equity between the GoSL and the LTTE shown by INGOs was aggressively rejected by the government. Another interesting allegation was concerning misuse of 'lifting bags', which were used to retrieve items from the ocean as part of the tsunami response. After the NGOs were finished using the bags they were meant to give them to the navy, though it was suspected many did not. These were apparently bags which could be used by the LTTE to pick-up smuggled goods dropped into the ocean. Regarding the accusations, the Minister Keheliya Rambukwella said that the government's actions were not 'a grudge against all NGOs operating in Sri Lanka' but they were only aimed at those which had violated the law and were 'attempting to meet the needs of terrorists'. Some of these INGOs were 'mercenaries who came as NGOs' to work in the conflict zones. These were in addition to the many INGOs who had come after the tsunami but were now nowhere to be seen despite the massive amount of funding which had been pledged. He concluded with the statements that 'we have to keep a tab on these people. There is no question of pampering them'.<sup>57</sup>

In another statement Minister Keheliya Rambukwella said that in the case of the six international non-governmental organisations which had had their visas cancelled, the government's decision had been in accordance with immigration regulations as they had violated immigration, customs, and defence ministry regulations. The six organisations were Medicines Sans Frontiers (MSF) France, MSF Spain, MDM France, Doctors of World USA, Medicos de Mundos, and Solidarities. He described the case of the INGO which had used the LTTE medical department emblem, stating that 'as far as the Government is concerned there is no LTTE medical Department which can deal officially in this manner'.<sup>58</sup> As it can be seen certain stories began to take on a life of their own, continually resurfacing and being melded with other stories.

Quickly following the above reports were those stating that the government had decided to forestall the deportations for a time. The Government Peace Secretariat announced on 3 October that work visas of certain members of the INGOs 'Medicines Sans Frontiers (France), Medicines Sans Frontiers (Spain), Medicos Del Mundo, and Doctors of the World' were being reviewed in accordance of the continuing police investigations, and until those investigations had been completed, the visas of those organisations would remain valid.<sup>59</sup> A 'well-informed source' said that Medicines Sans Frontiers, 'the France based International Non-Governmental Organisation', could continue to work while it

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<sup>57</sup> *Daily Mirror*, 4 October 2006.

<sup>58</sup> *Daily News*, 4 October 2006.

<sup>59</sup> *Island*, 4 October 2006.



appealed its expulsion. According to the Controller of Immigration and Emigration visas for INGOs were issued on the recommendations of the defence and foreign ministries and that he had been told not to cancel the visas of Medicines Sans Frontiers until their appeal had been heard.<sup>60</sup> This particular article stated that the affected INGOs had pleaded not guilty to ‘some of the charges levelled against them’, and that they had yet to ‘receive any official notification about the reasons behind the ban’.<sup>61</sup> Various designations were given for the organisations, such as: ‘MCF France (sic), MSF Spain, MBM France (sic), Doctors of the World USA, Solidarities, and Medicos de[l] Mundo’.<sup>62</sup> Both the press and government statements were not very careful with the names of the organisations. As with the above described narratives the story was confusing and often incoherent.

The next chapter is dedicated to a detailed discussion of these accusations and the contextual background to them. But to summarise the MSF story thus far, MSF was accused of a variety of offences related to alleged support given to the LTTE. The organisation was under criminal investigation and visas for their personnel were (at least for a time) revoked. Their personnel were at risk of being deported and operations had been stopped. Other organisations were also being accused of similar offences and, in fact, it was unclear which organisation was being accused of which offence, as even the names of the organisations were confused. MSF specifically was being confused with MDM and French organisations in general. After the initial threats were made concerning the revocation of the visas the government back-tracked somewhat and stated that the visas would not be revoked until the conclusion of the investigation. In all of the proceedings a number of government departments were involved, including the Ministry of Defence, the Peace Secretariat, the Immigration and Emigration Department, and the Parliamentary Select Committee.

#### **IV. Summary**

To summarise the findings thus far, the political and military situation, against the background of the tsunami, the second tsunami, and the negative press about the poor tsunami response, created a situation where attitudes towards NGOs had become critical in nature. NGOs were seen to be corrupt, inefficient, and more concerned with their wealth and health than the needs of the populations they were purportedly to serve. For the most part the performance of these agencies post-tsunami was evaluated negatively. As the war heated-up these agencies were thought to be on the side of the LTTE. These traits were seen to be counter to the identity of the self, which was understood, based

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<sup>60</sup> *Island*, 5 October 2006.

<sup>61</sup> *Daily Mirror*, 6 October 2006.

<sup>62</sup> *Daily Mirror*, 4 October 2006.

on the analysis, to be the identity of the Sinhalese and Buddhist majority. This majority, represented by the Colombo political elites, were strongly nationalist and were aggressively anti-LTTE, even in the midst of the peace process. The political elites were not monolithic, though, as there were a number of serious tensions between the SLFP, the JVP, the JHU, and the UNP. A triangle was formed between the political elites, dominated by the GoSL, the LTTE, and humanitarian international NGOs. As the political and military situation became more tense and difficult the anti-NGO feelings became stronger and a number of policies were formulated, and a number of investigative and monitoring policies were instigated, such as the PSC and RADA. The killing of the ACF staff again changed the situation for INGOs attempting to work in the conflict zones and another set of restrictions were put into place.

The discourse used to explain and justify such policies became ever harsher in this period as the government securitised NGOs. A process of securitisation was implemented through the use of discourse, which was based on the above understanding of the self and other. The result of this process was the political definition of who was friend and who was enemy. The discourse portrayed NGOs using dichotomies, each of which focussed on a particular theme. Principles versus practice: Agencies did not follow through with their principles but cared more about themselves. Western versus Asian: Western organisations did not understand the East. LTTE or Sinhalese/Muslim: INGOs supported the LTTE and the Tamils over the Sinhalese. Government versus NGOs: INGOs did not support the role of the government. Foreigners versus Sri Lankans: Often the foreigners cared more about their own than Sri Lankans. And Sri Lanka versus the international community: The GoSL was a small fish in a big pond but should not accept that fate and should try to take control of its fate or at least protect its dignity.

The ICRC and MSF stories show how this process worked in practice. The ICRC, though having a good reputation and considered a reliable neutral facilitator, was turned on quickly by the GoSL when it was considered a threat. For MSF it was accused of a number of offences, all related to its perceived support of the LTTE. This is the context within which MSF-Holland tried to re-enter the country and become registered. The next chapter will examine how MSF-H responded to this context.

## **Chapter Five**

### **The MSF-Holland Response July to December 2006:**

#### **Desecuritisation**

##### **I. Introduction**

This chapter reverses the angle and begins the story anew from MSF's viewpoint.<sup>1</sup> The last two chapters presented and analysed the GoSL's handling of the events of 2006 in relation to international humanitarian actors. The confused and at times incoherent nature of the discursive environment and of the government's actions has been noted and demonstrated. This discursive environment has been characterised as a context of securitisation. This chapter will examine how MSF reacted to the government's actions and analysed and responded to the general discursive environment. MSF had at its disposal a number of options when faced with being securitised. These are summarised in the chart below.<sup>2</sup>

**Fig. 2: Humanitarian INGO Reaction Options in a Securitised Context**

<b>Options</b>	<b>Description</b>
Desecuritisation	Attempt to desecuritise oneself through proactively responding to the securitised discursive environment and the actions of the government. A careful reading of the securitisation discourse is necessary. Targets of desecuritisation discourse may include the political elites, the general population, or both
Accommodation	Fulfil all government demands in earnest. Admit to the legitimacy of the securitisation discourse. Do not attempt to desecuritising oneself
Withdrawal	Give up on the possibility of working in the securitised context and withdraw from the country. This may be due to unwillingness or incapacity to desecuritise oneself. Withdrawal may be accompanied with a last public statement
Counter-attacking	Do not desecuritise oneself but try to securitise the other. Forgo the defence and go on the offence. This is a high-risk tactic
Concealment	Conceal oneself as complexly as possible. Withdraw from engagement with the government. Lay low until discovered, challenged, or the situation changes

<sup>1</sup> It will be recalled that MSF is a movement comprised of five 'sections'—headquarters—which are responsible for operations. Though this narrative is focussed on MSF-Holland the presence of two other MSF operational sections—MSF-Spain (MSF-E) and MSF-France (MSF-F), informed the thinking and action of MSF-Holland. This somewhat complicates the narrative, as it also complicates the advocacy and operations of individual MSF sections in locations where more than one section is present. But as these 'inter-sectional' dynamics were important to the decisions made by MSF-Holland they will also factor into the retelling of the tale. As far as is feasible the following designations will be used to differentiate between the MSF actors: 'MSF' will refer collectively to the three sections present and individual section designations will be used where appropriate, i.e., MSF-H, MSF-F, and MSF-E.

<sup>2</sup> Compare these INGO reactions to securitisation to Labonte and Edgerton's typology of denial, particularly the discussion of INGO options to respond to these denials, such as collaborate or turn away (Labonte and Edgerton, 'Typology', p. 51.)

Desecuritisation, accommodation, and counter-attacking all imply remaining in active dialogue with the government. In these cases the negotiation structure remains fully activated. Withdrawal and concealment removes oneself from active negotiation, the former by removing oneself from the country, and the latter by remaining in the context but trying to remain invisible. In these cases the organisation removes itself, either permanently or temporarily, from the negotiation structure. Needless to say these are idealised constructs. In practice an INGO will combine features of more than one option regardless of which basic option is decided upon. For example, even if an organisation chooses the desecuritisation option there may be elements of accommodation included in the response. This will particularly be the case when heavy administrative requirements are demanded to gain access. Therefore, prioritising the desecuritisation option does not preclude the inclusion of some elements of accommodation.

MSF analysed the GoSL discourse and made a choice to try to desecuritize itself. This process entailed an active use of its own discourse to counter the securitising discourse directed at the organisation. But as will be seen in the narrative elements of accommodation were included in the MSF response related specifically to administrative requirements. This chapter will trace the process MSF used in deciding on this strategy. First, MSF's analysis of the context will be presented, followed by a discussion of the internal MSF debates during this period which were based on this analysis. Next, MSF's discursive responses and the discursive indicators it used to track the GoSL's meaning are reviewed. A final section speaks more generally about the process of desecuritisation MSF used. This narrative is based on an analysis of many hundreds of MSF-H documents and a number of key informant interviews. The story told is a composite understanding gleaned from this primary source material. As such, unless pertinent or unique, the sources are not cited, however where possible a sense of which types of documents are being referred to is provided in the narrative.

## **II. MSF's Understanding of the Context**

As discussed previously MSF-H had been operational in the country continuously between 1995 until the beginning of 2004 when it left the country as the peace agreement seemed to be holding and humanitarian needs had decreased. The organisation returned at the time of the tsunami, however as it was a short and light intervention MSF did not suffer from many of the problems other organisations had which had remained operational or worked on development issues such as housing reconstruction. This brings the story to mid-2006 when MSF-H decided to return to Sri Lanka given the renewal of conflict.

At this time MSF-E and MSF-F were already present in the country. MSF-France had begun operations in Port Pedro and Jaffna and MSF-E was interested in starting-up operations in the Mannar area. The focus of attention for MSF was on the conflict-affected populations in the north, although all sections wanted to also be present in the east, specifically in the tense Batticaloa and Trincomalee areas. Gaining access to areas where active fighting was occurring, however, was extremely difficult. Complicating matters even more, at the end of September MSF-F and MSF-E were accused of vaguely specified crimes and were in the process of being expelled from the country. MSF-H however was told that it could remain. How this story was presented in the media was described at the end of the last chapter. As the analysis has thus far shown, there were a number of political factors, agendas, and personalities behind the aborted expulsions. In MSF-H's analysis the ground had been well prepared for an 'attack' on INGOs by the GoSL and all that was needed was a 'trigger', and this was provided when the Spanish section of MDM gave out training certificates which used the insignia of the LTTE alongside that of the GoSL MoH. This trigger was well reported in the press as has been already presented. MSF-H was convinced that the MSF problems began when MSF was mistaken for MDM. A high-level MSF-H official working in Sri Lanka at the time was told during this period that the government did not differentiate between the various organisations as there was 'really no difference between them', so that MDM and MSF were considered in effect the same organisation.

For MSF-H there were three reasons to explain why it was not also threatened with expulsion. The first related to timing, as MSF-H had returned to the country too late to be involved with the trigger event. The second related to the residual good relations MSF-H had retained with the authorities from its former operations. And the third was simply the fact that MDM, the organisation which MSF had been mistaken for, was French and the MDM section which was involved in the incident was Spanish, and therefore MSF-France and MSF-Spain were more naturally implicated than the Dutch section. To heighten this difference the Dutch section at this time used the Dutch designation for the organisation—Artsen Zonder Grenzen, rather than the French name.

MSF-H documentation from late 2006 paints the following picture of the thoughts and intentions of the Government of Sri Lanka and the general Sri Lankan population. MSF collectively thought that segments of the public believed that MSF was partial to and supportive of the LTTE, and was also part of a conspiracy by the international community to both undermine Sri Lanka's sovereignty and to perpetuate the conflict through its humanitarian action. It was felt that these perceptions created a

real security risk to its staff.<sup>3</sup> The specifically anti-MSF stories in the media were viewed as a subset of the general anti-NGO sentiment as espoused by the government and communicated through the media, and which MSF saw as being ‘false allegations and insinuations’. It was felt that the GoSL was either directly behind these negative stories or at least condoned them. Interestingly, though, the media itself was thought to be open to publishing corrections, and as seen in the last chapter this was in fact the case. Who or what constituted ‘the government’ was not well articulated, but the government was not seen to be willing to normalise MSF’s position and accept the organisation’s presence. Questions were asked about how to respond to this situation:

Whether by design, intense bureaucracy, coincidence or whatever, the space for humanitarian action - at least for MSF - has decreased to 1-2%. Long discussions about the whys and wherefores but the bottom line remains that we have little room left. Also agreed (but less certainly) is that, barring major and significant changes in tangible results (as opposed to good news/bad news stories in the press), MSF should not simply sit back and allow external actors to determine when we act; there has to come a time when we decide when action is needed.<sup>4</sup>

It was agreed by all involved that the government needed to clear up the allegations about MSF, especially as insecurity had increased due to the allegations and the ‘government’s ambivalence’. Although each section was in a different stage in dealing with the bureaucracy, all felt that there was an unacceptable time delay in the processing of permits and visas. It was noted that the government did not talk with one voice. For example, concerning the charges made against MSF-F and MSF-E, at first the Immigration Department said that there was a police investigation, but the Health Minister said that it was up to the MoD, which itself refused to give any comment on the matter. But later the Controller of Immigration and Emigration said that the MoD told him to revalidate the organisations’ visas as the investigation had been concluded. It was difficult for the MSF sections involved to understand where they stood and which department had the true story. This was thought to be partly due to institutionalised excessive bureaucracy but also partly due to unexplained antipathy the MoD felt towards MSF, which was a serious issue as the Ministry of Defence was in control of all governmental decisions concerning the work of INGOs in the conflict-affected areas.

MSF of course read and analysed the same discourse as reviewed in the last chapters. In general it was felt that there was a ‘misinformation campaign’ against INGOs to encourage them to leave and be replaced by Sinhalese NGOs. The MSF analysis was that the ‘1500 NGOs’ that had arrived since the tsunami had necessitated the government to rationalise the situation. In MSF’s view subjects of

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<sup>3</sup> ‘Risk Analysis annex’, 1 November 2006.

<sup>4</sup> Extracted from notes from inter-sectional discussions from the beginning of October 2006 as preparation for a press conference.

concern to the government were: Corruption, illegal activities, misappropriation of funds, and lack of respect for promises made. Another concern was that INGOs were trying to re-colonise Sri Lanka. The government was also missing out on funds because of NGO tax exemptions.<sup>5</sup> Reports from this period reiterated that ‘the government will shortly introduce an amendment to the Voluntary Social Services Organizations (Registration and Supervision) Act to ban NGOs and INGOs that act contrary to national security interests’. This was related to recommendations made by the Parliamentary Select Committee.<sup>6</sup> All sections considered this to be a highly unfortunate situation as Sri Lanka was a context where fighting was becoming more intense and there was a ‘lack of medical and surgical services for civilians in conflict areas’, but at the same time access to the populations in need was nearly impossible.<sup>7</sup>

### III. Internal Debates: ‘Clearing Our Name’ and Access

A timeline as documented by an MSF inter-sectional communications officer from the beginning of October puts the following internal MSF debates in context:<sup>8</sup>

- Saturday 30 September: ‘Reception of the letter from the Department of Immigration and Emigration and the Ministry of Defence who asked MSF to leave 7th of October’
- Tuesday 3 October: ‘Requested for an appointment with the Controller of Department of Immigration & Emigration and he said, ‘You can stay for the moment, you are under investigation, everything you say is being recorded’’
- Wednesday 4th: ‘Breaking of the alliance JVP – SLFP’
- Thursday 5th: ‘Ministry of Human Rights meeting: Ministry of Human Rights had received a fax from the Department of Emigration stating that MSF-France & MSF-Spain can continue to work until further notice. Alliance UNP – SLFP, Signature MOU’
- ‘During this time 9 English [language] [Sri Lankan] Newspaper articles making false allegations on MSF in addition to that Sinhalese and Tamil Newspapers. 2 Articles in the local newspapers mention our withdrawal of PPD [Port Pedro] team. Following the statement on *Tamil Net*’

MSF was in ‘crisis’ mode. In this period MSF was waiting for meetings with high-level officials in the government to try to negotiate an end to the crisis. At this point the exact status of the affected sections was still uncertain, although through various informal contacts it was understood that the government didn’t actually have any serious issues with MSF. However, government officials could

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<sup>5</sup> ‘Communications report’, October 2006.

<sup>6</sup> *Daily News*, 6 October 2006.

<sup>7</sup> ‘Communications officer report’, October 2006.

<sup>8</sup> Quotes from MSF documentation are always given in the original. As many of the documents were written by non-native English speakers there were frequent grammatical mistakes which have not been corrected or remarked upon in order to maintain the authenticity of the primary source materials.

not say so formally, supposedly for reasons of ‘face’. The MoD had downgraded the ‘crisis’ to a visa issue and from their perspective the problem had been adequately dealt with. But from MSF’s perspective it had not yet been adequately dealt with without a formal, public statement on the part of the government. For all of the sections the main objective was to ‘clear our name’, however there were different views about how this was to be done. The primary objective was to ensure the security of the organisation’s personnel, especially those involved with the programmes which were progressively being closed down due to the crisis. The secondary objective was to return to the field. The initial response was in two parts: First the removal of the perception that MSF was partial to the LTTE, and second a public announcement by the government was hoped for which would state that the charges against MSF had been dropped and the organisation had been cleared of all accusations of illegal acts. Only on this basis could access be properly negotiated.

The sections agreed that it was highly unlikely that there would be ‘an overt public retraction’ by the government. Crucially, MSF-H felt that it was necessary ‘to be sensitive to reading a string of subtle hints, rumours and signals akin to the wall posters in Mao’s China signalling a mood change – this is something we are not used to, and is alien to our occidental culture’. It was also felt that MSF collectively had missed such signals in mid-September, before the crisis had erupted, and that it was important not to miss such signals again. There was much debate about what could be expected: Maybe not an official public statement but something more in the ‘Asian way vein’? Or preferably something more than this, such as a public statement by an official mentioning MSF by name, if not an official retraction or apology. The government had allowed, or condoned—MSF never knew which—the publishing of the fact that MSF was allowed to stay in the country during the investigation, and this was a good start, but MSF was looking for at least one more story, even if only a statement by the police or a report in the ‘police beat’ section of the papers, anything which clearly stated that MSF was no longer a suspect in any on-going investigations. It was agreed that the ‘clearing our name’ story needed coverage equivalent to the coverage given to the allegations in the first place. But in considering what sort of response to expect from the government a consensus formed that it was important to try to see the situation from the government’s perspective and to be realistic. In the words of one MSF-Holland official, ‘I agree that the climate is hostile to NGOs. I do not agree it is impossible to work here, it requires patience, a willingness to progress in small steps, not sledgehammer tactics and an understanding of Asian cultures’. Regardless, the frustration with the situation was clearly stated:



We acknowledge our impotence to change this situation solely through a face-to-face strategy with the authorities (until now our public communication has been weak and limited to a small number of local journalists) ... we have reached the limits of the silent advocacy strategy and our lack of public communication is bordering on complicity with a policy of hindering humanitarian access to civilians in need.

Ideas to respond to this situation were varied. One option discussed was to launch an aggressive lobbying campaign with the GoSL as well as through 'normal' NGO channels such as the Consortium of Humanitarian Agencies. Another response discussed was to put pressure at the international level, involving the diplomatic corps and the international press. On a domestic level also it was thought that there should be more positive stories about the organisation in the local press, including open letters to the MoD. But with the notable exception of the press briefing discussed in the next section, the dialogue through the press was a 'one-way street', as MSF did not effectively use the press to communicate. MSF was 'passive in reading the papers but not reacting' to the stories, and this was thought a mistake by key MSF-H informants.

Interestingly during this period MSF strove to accommodate to all administrative requirements. Regardless of the focus on desecuritisation the organisation did not argue with the need to fulfil the bureaucratic requirements demanded of it to remain in the country and gain access to the areas and populations of concern. These administrative requirements related to visas, residence permits, MoUs, and permissions to access the conflict-affected areas. In fact, it was the government's delay in completing these administrative tasks that created the 'crisis' in the first place. In this narrative the existence of these parallel tracks must be understood.

Related to the above much of the internal MSF debates revolved around the implications of the situation to MSF's current and future access.<sup>9</sup> Regardless of whether the delays were intentional or caused by excessive bureaucracy, the consequences were the same, and that was the inability to access the populations in need. A central (rhetorical) question was, 'if by playing the game we get access to thousands in a few months, is it worth the lives of the hundreds in the meantime? In which case we are no longer an emergency organisation but [a] development [agency]: Rebuilding broken infrastructure and building coffins not performing surgeries'. In the end the MSF assessment of the context was that it would be a long-term conflict and therefore MSF assistance would be needed even more in the future. The 'logical conclusion' was that the organisation should not consider leaving,

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<sup>9</sup> This section is based on: 'Communications plan for Sri Lanka, Draft 18 Oct. 2006' and 'Risk Analysis annex', 1 November 2006.

‘so long as there are potential victims who need our help and so long as there is even a remote possibility of accessing them then we have to keep the channels of communication open’.

Yet it was important to avoid complicity with the GoSL policies on limiting access and red lines had to be determined. As such the question of withdrawal became increasingly more prominent in the debates. Some voices argued that ‘without significant changes to access, we should decide upon withdrawal’. There were many discussions about how long to wait to make such a decision. Initially it was decided that 19 October would be the decision day (although for undocumented reasons this deadline would not be adhered to). If there was no progress by that date there would be an international media press conference in-country and outside and a posting on the MSF websites stating that ‘MSF decides to leave Sri Lanka due to lack of humanitarian access’. However there was room for flexibility depending on the circumstances. If MSF-H were able in the meantime to get its MoU signed and the first visas issued allowing access to Vavuniya, this would then allow moderation of the coverage. Some voices thought that it was too short a time to give to the government, especially given that the government was preparing for new peace talks with the LTTE on 28-29 October. At times the MSF discussions were highly introspective and did not take into account the general political context or the fact that NGOs in general were being securitised and it was not only a problem with MSF. In the end the period of trying, waiting, debates, and desecuritisation lasted well into December, at which time progress was finally made on obtaining the needed paperwork to be able to stay and work (discussed in more detail below). Regardless of the periodic arbitrary deadlines for decision that were set a final decision to withdraw was difficult for the organisation to make.

Although the feeling of crisis in the documentation from this period is palpable, a retrospective MSF-H report written at a later time admitted that ‘the issue may have looked more important to us than to the rest of Sri Lanka, in other words, our concerns may have been exaggerated by paranoia/egotism’, and ‘the effects of the slanders in the press – at least in terms of risks to our staff and programmes – [were] much less than originally thought’. But most interestingly, the report also stated that in the future ‘what we should *not* do is to put improving our public reputation (beyond that needed for security) before struggling for access – our energies should be focused on getting the programmes running’. Thus the very choice of the desecuritisation option was questioned. Was desecuritisation a necessary concern? Did it assist the organisation in gaining access in any way? Were other choices available and more worthy, even those not considered at the time?

Regardless of the after-the-fact questioning, the discussions from this period paint an intriguing picture of the options under consideration, or not under consideration, to respond to the situation.<sup>10</sup> Withdrawal before attempting other options was never on the table, though withdrawing if all else failed was repeatedly discussed. Accommodation without desecuritisation was never discussed as an option, being outside the bounds of MSF thinking during a period of crisis. And laying-low was also not seriously considered, quite the contrary, as it was felt that it was necessary to do more to actively promote a positive image of the agency as well as battle the negative images. A desecuritisation (with some accommodation) approach was decided upon. The targets of desecuritisation were both the government and the general population. The next section will review the actual discursive responses utilised by the organisation.

#### **IV. Discursive Responses**

During the crisis period a number of attempts were made to desecuritize the organisation and hopefully in the process create the space for operations. These attempts included letters to the government, press work, and advocacy activities with international actors. This section will review a number of these efforts.

A collective MSF letter written on 29 September to the Minister of Human Rights and Disaster Management is illustrative of both the type of dialogue MSF had with the GoSL during this period and the themes under discussion. The letter stated that MSF had arrived back in the country in June and was working closely with the MoH in assessing needs. And ‘to facilitate the implementation of new activities, MSF has undertaken the usual procedures to obtain necessary permissions and clearances’. However, MSF had been ‘verbally informed’ that ‘along with other NGOs, [we] will be denied further visas and asked to leave Sri Lanka. The reasons for this are unclear at this time, but we feel strongly that it may be due to some misunderstanding’. As far as MSF was concerned the organisation had always acted appropriately and with transparency. MSF wondered if it wasn’t possible that the activities of another agency had been mistaken for MSF activities and that expatriate personnel working for another agency had been mistaken for MSF personnel. The message at this point in time was that MSF was uncertain why it was being targeted but was sure that it was a mistake.

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<sup>10</sup> This section is based on the documents: ‘Internal MSF discussion’ notes, 14 Oct. 2006; ‘Sri Lanka: Situation Analysis and Response’, 16 October 2006; and ‘Report by the Heads of Mission of MSF Holland, Spain & France’ (undated).

This letter also gives a clear indication of the importance of administrative requirements in the negotiations with the government.

When such letters did not have the desired effect other options had to be considered. One activity as part of the response in the beginning of October was to hold a press conference to give MSF's side of the story.<sup>11</sup> Senior MSF officials from Europe were in attendance. Prior to the press briefings the following main points were outlined to be discussed at the press conference:

- MSF has assisted many people in an impartial manner
- MSF is in Sri Lanka because the needs are acute but the organisation will leave when this is no longer the case
- MSF supports and works with local health structures
- MSF believes that if authorities do not recognise the value of our work, then our value is diminished
- Security of MSF personnel is of prime importance and the organisation believes that security is reduced when the population and authorities do not acknowledge the organisation's neutrality
- If insecurity rises too much then MSF will reconsider its continued presence despite the recognised needs
- The unfair and inaccurate allegations against MSF must stop and a clear statement is demanded from the government whether they value MSFs work or not
- It will be the people of Sri Lanka who will suffer if MSF cannot remain

As a result of this press conference the MSF narrative was put into the public sphere and various articles relating the MSF side of the story appeared over the coming days. One such was a *Sunday Nation* article which paraphrased the MSF message as saying that 'working in Sri Lanka during the last few months had been difficult due to increased violence in the North and the East and the hostility aimed at them by certain facets in the civil society'.<sup>12</sup> Interestingly the *Sunday Nation* contacted the French Embassy and 'learnt that the MSF considers the situation as grave and they are planning to issue a media brief early this week'. In another story MSF was described as 'one of the INGOs accused of having acted contrary to national security interests', and MSF was summarised as saying that 'it expects a swift resolution to the problem and stands committed to alleviate suffering in an unbiased manner'.<sup>13</sup> A story in the *Island*, 'Tell us are we welcome or not – MSF', also described the press conference.<sup>14</sup> The sub-headline was that MSF had 'appealed to the government to tell whether they are "welcome here or not" at a hurriedly called briefing'.<sup>15</sup> MSF was also reported to have said

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<sup>11</sup> 'MSF Core Messages for Press Briefing', (undated).

<sup>12</sup> *Sunday Nation*, 8 October 2006.

<sup>13</sup> *Daily News*, 6 October 2006.

<sup>14</sup> Harischandra Gunaratna, 'Tell us are we welcome or not – MSF', *Island*, 10 October 2006.

<sup>15</sup> Gunaratna, 'Tell us'.

that the government didn't 'speak with one voice'. MSF was quoted as saying that they had been 'put into the basket of wrong-doers'. The basic issue from MSF's viewpoint involved the negative media reports concerning the organisation and its desire for 'the government to clear up these allegations, one way or the other'.

Although MSF had been told by various officials that a police investigation was on-going, MSF was said to have stated that the police had not yet visited the organisation. Ironically, during the press briefing itself officers from the Criminal Investigation Department (CID) actually did arrive to the MSF office related to the police investigation. The police did not bring any formal charges against MSF and the visit was described in an internal MSF report as having been 'a polite investigation'. Intriguingly, MSF noted in another internal report that it had only learnt the details about the actual accusations against it from the police visit and that they had been changed from the originally reported 'conspiracy to assassinate senior government officials' to 'merely criticising the Department of Immigration'.

A letter to the president three weeks later gives a more comprehensive view of the situation. This letter is quoted in its entirety as it encapsulates all of the points the organisation was concerned with during this period:

An Open Letter to His Excellency Mahinda Rajapaksa, President, Democratic Socialist Republic of Sri Lanka, October 19, 2006:

Médecins Sans Frontières (MSF) would like to offer its sympathies to the people of Sri Lanka who are once again suffering from a wave of violence. We offer more than sympathies, however: MSF has provided medical relief to millions of Sri Lankans over the twenty years since 1986 and stands ready to do so again. We have made a commitment to the people of Sri Lanka and are prepared to honour that commitment. Recent media reports told of some Sri Lankan hospitals overflowing due to the arrival of many war wounded; of civilians unable to obtain treatment from overcrowded health facilities and wounded soldiers lacking adequate treatment. As a medical, humanitarian organization MSF is deeply concerned about these reports, and worried such a situation might occur again in the future.

A few months ago MSF responded promptly to requests for assistance from the Ministry of Healthcare and Nutrition (MoH) in multiple locations in the North and East. Since then however, security considerations have forced MSF to remove its medical personnel from the country, thus ending our provision of surgical and other medical care in Point Pedro hospital after just ten weeks. Furthermore, administrative and bureaucratic obstacles resulting in a lack of permits and permissions have prevented us from even being able to commence work in Trincomalee, Vavuniya and Mannar. The media reports that people need assistance in these areas; the MoH requested help in these areas. The needs are clear.

And MSF is prepared to meet those needs: Experienced and qualified MSF surgeons, nurses and other staff have been on standby for months, desperately wanting to help but unable to do so due to a lack of permits and paperwork.

Your Excellency, you have on many occasions publicly called for support of humanitarian causes and care for the people of this country. We urge you to allow MSF to help your people by facilitating our access to those in need. A prompt decision on your part will see MSF medical teams working alongside MoH personnel helping to ease the suffering of hundreds, if not thousands of Sri Lankans.

Not through MSF's instigation the letter also appeared in the *Island*.<sup>16</sup> In the accompanying story MSF was said to have offered to help the government to treat the war wounded 'in the backdrop of reports' that government hospitals were unable to cope with the large number of war wounded. As the *Island* was considered to be a sensationalist newspaper, one more likely to be read by the general population (at least by those who could and would read English language media), MSF was uncertain why it would have reprinted such a letter, especially when it was framed by the government's lack of capacity to deal with the medical needs of the war wounded. Or was this itself the reason? Using the MSF-H view on signals, was this an Asian way signal to indicate that MSF was indeed welcomed?

Whether the above signals analysis was correct or not, MSF's administrative problems began to subside in November. As such a whole series of letters were sent to GoSL contacts thanking them for their assistance. An example is a letter sent on 9 November to the Minister of Foreign Affairs. MSF acknowledged and appreciated the efforts of the ministry and the minister 'in facilitating the granting of approvals for Médecins Sans Frontières in Sri Lanka'. The organisation had in fact seen results of this facilitation, and it was 'clear that there has been a general shift in attitudes towards the value of MSF to the people of Sri Lanka'. MSF expected that 'the final hurdles' were to be cleared over the next few weeks, at which point 'the first teams should be in the field, aiding those in need'. The letter closed with the line 'on behalf of MSF, and the people of Sri Lanka, our thanks to your Honour and your staff'. One cannot help but wonder how such a statement was interpreted by a government official, but it does speak volumes about the sometimes paternalistic attitude INGOs have towards the populations for whom they work.

However the above optimism was short-sighted as the administrative issues were not resolved in the envisioned timeframe. The visa issue had in fact not been solved and expatriate staff could still not enter the country. It was thought to be the MoD which was holding-up the process. In an attempt to

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<sup>16</sup> *Island*, 20 October 2006.

rectify the situation – namely to speed up the process – the three MSF sections agreed upon the following tactics.<sup>17</sup> First, release an update of the current situation to all interested parties (non-public) including selected Sri Lankan diplomats outside of Sri Lanka. Second, meet with key embassies and high commissions to see if they would intervene with the MoD and request them to issue work permits as soon as possible. Third, meet with relevant ministries—the MoH, the Ministry of Human Rights, and the Ministry of Foreign Affairs, to give them the message directly and in person. Fourth, discuss the MSF situation with UNOCHA and ‘the apparent contradiction of having us on the list to access un-cleared [conflict] areas while not being allowed to bring staff in’. And fifth, send letters to the MoD with the above message. It was envisioned to allow two-and-a-half weeks (to 15 December) for the above activities to produce notable results. The minimum acceptable results was MSF expatriates being granted residence visas without special exceptions. As was discussed earlier in the year, it was decided that without such concrete progress a public campaign would be implemented. For such public communications the common themes would be:

- MSF cannot work in a continuous state of delay and procrastination; it is not possible for us to constantly put qualified medical personnel on standby for months on end
- MSF calls for someone in authority to inform us how much longer we must wait before expatriates will be allowed to work in Sri Lanka
- We do not know why the process is slow, however the overall delays are unacceptable; MSF no longer accepts the minor excuses for each trivial delay of a few days without looking at the bigger picture: months have gone by without the ultimate target being achieved, namely the provision of medical assistance to those in need in Point Pedro, Mannar and Vavuniya

At this point in time MSF still did not know how much of the delay was excessive bureaucracy, how much was internal politics (‘had little to do with MSF itself’), and how much was ‘deliberate blocking’ and ‘had a lot to do with MSF itself’. All sections had received verbal encouragements by government officials and theoretically MSF’s presence was welcomed. As far as MSF could tell there were ‘no objections to our interventions at any level’. In fact, all sections had received a letter from the MoH stating that they would ‘be able to work at [their] relevant projects and should proceed with getting expatriates into the country’. Yet this was not the case in reality. MSF’s main concerns at this time (the end of November) were:

The constant delays in the system that seem too long to be simply a matter of excessive bureaucracy; actions that should take days take weeks or months. The lack of certainty; procedures and rules change constantly seemingly with new requirements added with each

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<sup>17</sup> ‘Sri Lanka Communications, November 28, 2006, MSF-all sections’.

visit. The subsequent inability to forecast how long the process of getting staff into the field will take (if ever!)

The next step was to in December send a series of letters to external actors, including to a wide variety of embassies and UN agencies plus the ICRC. A letter to the American ambassador is a good example of these. It stated that, although formal indications had been given by the MoH that the administrative problems would be solved soon, and remembering that such formal, written communications were considered to be much more ironclad than Asian way verbal communications, ‘paradoxically, our efforts to get expatriates into the country are currently blocked by the MoH’. The letter continued to remark that ‘MSF’s main concern at this time is the simple fact that despite the months of endeavouring to meet all the bureaucratic hurdles thrown at us and despite the support of some able people in the government, we are still no closer to our main objective of helping patients in the North.’ MSF asked for support in calling for the Sri Lankan government to:

- Speedily process all outstanding memoranda of understanding, applications for visas and associated papers, and other permissions needed to get qualified and experienced medical personnel into those areas identified as in need
- Actively assist MSF to set up their interventions to assist Sri Lankans
- Make time commitments to MSF regarding how long it will take to get permission for personnel to start work (from time of application) so intelligent plans could be made for staffing without depriving others in need around the world

The next step if such diplomatic support was not helpful was to start a public campaign. Finally, though, the problems were solved before it was necessary to ‘go public’. For an unknown reason, but possibly as a result of the diplomatic pressure, the dam had broken and by February 2007 the situation had gone ‘back to normal’ according to an article on MSF in the *Island*.<sup>18</sup> In this article MSF stated that it had obtained clearance from the MoD and had signed an agreement with the MoH to open surgical programmes in Point Pedro, Mannar, and Vavuniya, and on 21 December 2006 a MSF team had returned to the Jaffna Peninsula to start the programme there. The article goes into detail about the programme. Without knowing the background anyone reading the story would have thought that starting the programme had been a relatively unproblematic endeavour.

A retrospective report on the September to December 2006 period sums up MSF-Holland’s experience during this period:

In the post-tsunami period, there is some suspicion of NGO’s and their activities in general, with reports of NGO’s supporting LTTE. Regulations and restrictions on activities and access to populations in the north and east of the country have been tightened. MSF suffered

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<sup>18</sup> *Island*, ‘MSF returns to the North’, 20 February 2007.



directly from this, with MSFE and MSFF being at one stage ‘banned’ and asked to leave the country. This was eventually resolved with the intervention of several higher up and key actors from both MSF and the international community. All approvals must ultimately go through the Ministry of Defence (MoD). The high level of suspicion combined with the increased levels of bureaucracy and unclear government procedures have led to long delays in processing of visas and to get MoU to allow projects to commence.

From MSF-Holland’s perspective the administrative crisis was over and it was time to reengage with the humanitarian context.

Through the discussion and analysis presented in chapters three and four it can be understood why the GoSL securitised INGOs in this period. MSF’s particular story can also be readily grasped. What is far from clear, though, is why the GoSL seemed to stand down on the securitisation process in early 2007. What is also noteworthy is the delay between when MSF was told that the problems had been fixed—say, in November, and when the relationship in reality was finally repaired—late December 2006 to early 2007. Any bureaucracy suffers from inertia which takes time to dampen, and this may be the explanation for the delay. The overall reason why the securitisation process was moderated, though, remains an open question and requires more research to be answered. Paired with this is the need for a further examination of the impact of MSF’s attempt at desecuritisation on this process—for MSF in particular and for INGOs in general. As part of this question the links between the actions and discourse of different NGOs would have to be examined, i.e., did the GoSL listen to particular NGOs, or only react to the collective voice of NGOs? This research unfortunately falls outside the remit of this study.

## **V. Discourse Indicators**

The last question to be addressed in this chapter is how MSF read the discursive environment. What discourse analysis tools did the organisation use to track changes in the discursive context? In the difficult September to December period MSF-Holland was concerned about (again) missing the ‘Asian way’ signals communicated by the government. These ‘signals’ were thought of as messages indirectly communicated to the designated recipient via means other than face-to-face or written (official) communications, allowing for ‘plausible deniability’ on the part of the government. But more than being messages to particular actors, such as MSF, or types of actors, such as humanitarian INGOs, these signals were also thought to be directed at certain segments of the population, such as the political elites, or even the population as a whole. In the case of the political elites the objective would be to give indications about how the actor, or actors, should be engaged with, and in the case

of the general population the objective would be to justify the policies and behaviour of the government.

In an effort to understand the changing nature of the government's attitudes towards humanitarian INGOs, MSF-H used various indicators to mark discursive changes, such as media stories and speeches by government officials. The aim was to locate sources of discourse which would allow signs to be read. But beyond the need to gauge the government's attitude, knowledge of which would inform the organisation's approach to negotiations, there was a secondary objective to the monitoring of discursive practice. This objective related to MSF's desire to know what information the general public was receiving, as it was considered important that there was also a change in the public's perception of INGOs. The organisation felt that some of the security risks its staff faced were derived from the negative attitude towards INGOs held by the general population, and as such it was vital to understand what sort of information was directed at them. Therefore the concern was not limited to what the government thought, but the organisation was as concerned with what the general population was thinking. The viewpoint mirrored in an interesting way the government's securitisation objective. This section will review what some of these sources of discourse were, how they were used as indicators, and the analysis MSF-H had of them. To do so a few of the sources will be reviewed in detail.

Referring back to the timeline of negative media stories presented above, it will be recalled that the timeline also marked contextual events which were on MSF's radar, particularly political events which were occurring at the time. The domestic political situation was watched closely as the political manoeuvrings were considered to be relevant to the changing status of INGOs. MSF expected that a change in the attitude towards INGOs would coincide with the arrival of the 'new political environment', especially with the JVP losing their influence in the GoSL and the subsequent rise of the UNP's political fortunes. As seen in chapters three and four the JVP played a leading role in the anti-NGO rhetoric and policies. The JVP was behind the Parliamentary Select Committee on the role of NGOs and much of the negative discourse concerning NGOs came from JVP representatives or from newspaper editors sympathetic to the JVP and JHU agendas. Therefore, if the political weight of the JVP was lessening this might have a positive impact on how INGOs were perceived. Other political events were also investigated by MSF for signs of a changing attitude to INGOs, such as speeches given by President Rajapaksa which mentioned NGOs, of which there were many. Three of these speeches are analysed below. Two of these were made at key international

events which took place in September—the Non-Aligned Movement (NAM) summit in Havana, Cuba, and the yearly UN General Assembly debate in New York.

The NAM summit was held in mid-September and President Rajapaksa played a prominent role in the meetings.<sup>19</sup> The NAM at that time was composed of 118 member states. One of the key issues for the NAM summit, as well as for the UN General Assembly meeting which closely followed it, was the fight against terrorism, and one in which Rajapaksa stressed in his speech: ‘All of us together need to find innovative means and ways to combat terrorism, as it poses a grave threat to the political and economic well-being, sovereignty and territorial integrity of nation-states’.<sup>20</sup> Rajapaksa chaired the opening session of the final day.<sup>21</sup> But it was a side-meeting which drew the interest of MSF. Rajapaksa had a one-on-one meeting with UN Secretary General Kofi Annan in which he stated that ‘the Sri Lankan security forces had been compelled to take measures to defend themselves in the face of widespread provocations by the LTTE’. This statement was necessitated by the repeated calls by the international community to the GoSL to decrease the level of violence in the conflict with the LTTE. President Rajapaksa also ‘noted that access to areas of conflict had been given to the ICRC and UN agencies for relief work. However, the government would provide such access only to internationally recognized NGOs as there were some NGOs that did not perform a useful function’. This was viewed by MSF as a positive statement on access, even if conditional in nature. It was important that it was a public statement and that it was reported in the Sri Lankan media. This story followed closely on another reference made on access in an article in the *Island*.<sup>22</sup> After all of the criticism of NGOs in the press, the President’s Office had ‘invited national and humanitarian international aid agencies to join with the government to support internally displaced persons in Muttur and Trincomalee’. Such a statement was understood to be primarily a rhetorical device for international consumption, but was still a positive indicator for those watching for signs.

The final communique of the summit itself contained a few relevant points for INGOs seeking to understand the general perspective of developing states vis-à-vis INGOs.<sup>23</sup> Four paragraphs were of especial interest. In the first the NAM condemned the increasing attacks on humanitarian personnel but also stated that ‘humanitarian agencies and their personnel should respect the laws of the countries they work in and the principles of neutrality and non-interference, as well as cultural, religious and other values of the population in the countries where they operate’. Such a statement

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<sup>19</sup> *Island*, 17 September 2006.

<sup>20</sup> *Island*, 18 September 2006.

<sup>21</sup> *Island*, 17 September 2006.

<sup>22</sup> *Island*, 14 September 2006.

<sup>23</sup> *Ibid*

was indicative of the two-sided nature of the relationship between INGOs and states. INGOs should not be attacked, but INGOs should also remember to work within certain political, legal, and cultural parameters. In addition a warning was given that:

The provision of humanitarian assistance must not be politicised and must be in full respect of the principles of humanity, neutrality and impartiality as set forth in General Assembly Resolution 46/182 and its annex as providing the guiding principles for the coordination of humanitarian assistance, and emphasised that all UN humanitarian entities and associated organisations must act in accordance with their respective mandates, humanitarian international law and national law ... In this context, they stressed that humanitarian assistance should be provided under the principle of request and consent of the affected country.

As such the Non-aligned Movement rejected ‘the so-called ‘right’ of humanitarian intervention, which has no basis either in the UN Charter or in international law’. These were clear signals to humanitarian INGOs that there were limits to humanitarian assistance. As an organisation which was associated with this ‘right of intervention’, and which even contained the idea of ‘without borders’ in its name and identity, MSF was well aware of this perspective which was held by most states. In the Sri Lanka context consent was being requested by MSF and the fact that it was not forthcoming was the major issue to be addressed. The GoSL’s perspective on this very question—was consent to be given to MSF?—was in fact the core of what was being tracked by the organisation. As it was understood that decisions came down from the top, the president’s perspective was especially important to monitor.

The 61<sup>st</sup> United Nations General Assembly debate took place at the end of September. The theme was ‘Implementing a Global Partnership for Development’. Discussions were also held on the UN Comprehensive Global Counter-Terrorism Strategy.<sup>24</sup> As was tradition every head of state or government made a speech and President Rajapaksa’s speech was made on 20 September. In his speech Rajapaksa characterised Sri Lanka as having been ‘influenced by the core Buddhist values of non-violence, loving kindness, compassion, equanimity and mindfulness’. Related to the discussion of the conflict the president made reference to Sri Lanka being Chair of the Ad-hoc Committee on Measures to Eliminate International Terrorism and said that all involved with this issue would ‘spare no effort to realize the international legal framework to facilitate our common struggle against terrorism’. The speech touched on a number of issues related to the humanitarian situation in Sri Lanka. A clear statement was made on access to humanitarian agencies which was very similar to

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<sup>24</sup> See the statement by H.E. Sheikha Haya Rashid al Khalifa, President of the United Nations General Assembly, 19 September 2006, [www.un.org/webcast/ga/61/pdfs/khalifa-e.pdf](http://www.un.org/webcast/ga/61/pdfs/khalifa-e.pdf) [last accessed 25 March 2015].

that made at the time of the NAM summit: ‘As a responsible government, we will continue to provide unhindered access to conflict-affected areas to the ICRC, to UN Agencies and to other recognized humanitarian agencies’. Concerning the actual humanitarian situation, it was characterised in the following way:

Over 53,000 Muslims were evicted from their homes by the LTTE, following the recent violence. They are the innocent victims of the LTTE's ruthless policies. Following government counter measures, almost all of these have now returned to their homes. The government has assumed responsibility to provide medical supplies, food and other essential items to the Internally Displaced Persons living in the affected areas.

In any such setting it is of course understandable that a government will advertise its role in responding to a crisis. In this case the government was making clear that it was responsible for attending to the crisis and the needs of the affected population and that it was the legal entity responsible for deciding on the parameters of access for humanitarian agencies to the conflict-affected zones. As with the NAM statements, international actors were welcome as long as they played by the rules as set down by the state. Such a statement, though, was still considered by MSF to be a positive indication of governmental attitudes towards humanitarian organisations as it did provide potential space for negotiations.

The Co-Chairs of the Tokyo Donors’ Conference—Norway, the European Union, Japan, and the United States, met periodically. The donors’ conference was a post-ceasefire agreement on reconstruction funding mechanisms. In the midst of the developing crisis the co-chairs issued a statement of concern about the humanitarian situation. As part of his response to these concerns, President Rajapaksa agreed to the formation of a consultative committee chaired by the Minister for Human Rights and Disaster Management and which would be comprised of key government officials, inclusive of the MoD. Importantly, the committee was ‘to meet key NGOs and their representatives on a regular basis to address matters of common concern’. In a statement the president ‘emphasised that the GoSL would continue to facilitate humanitarian access to the conflict-affected areas keeping in mind security considerations’, and expressed his ‘appreciation of the contribution that many NGOs and humanitarian agencies were making towards assisting the Government’s efforts to provide essential services to conflict-affected areas’.<sup>25</sup> As this statement was aimed at the Sri Lankan audience it was thought particularly indicative of the government’s attitude by MSF.

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<sup>25</sup> *Island*, 10 October 2006. And: ‘Sri Lanka Co-Chairs Call For Immediate Cessation of Hostilities’, Press Statement, Sean McCormack, Washington, DC, August 11, 2006, <http://2001-2009.state.gov/r/pa/prs/ps/2006/70312.htm> [last accessed 25 March 2015].

Beyond the president's speeches various articles and books were mentioned in the MSF documentation which were seen to have given indications, positive or negative, of changing attitudes. Two examples will be discussed to complete the discursive picture. Press articles were characterised by MSF on how 'intellectual' the audience was who read the different newspapers. There was strong debate between different MSF officials about the benefits of 'intellectual' papers over 'sensationalist' papers. The *Mirror*, for example, was seen to be targeting the intelligentsia, as opposed to the more sensationalist *Island*. Some thought that editorials in an 'intellectual paper' should not be considered to be reflective of a position of the government and in fact would not contribute to the clearing of MSF's name. On this view what was needed was 'some news in the newspapers where the common public can have access and easy understanding of the situation', rather than articles, editorials, or books that would not reach the general public. This fits the agenda of desecuritisation introduced above, which focussed on how the GoSL was thought to be communicating with the common man rather than the political elites. Not everyone within MSF though agreed with this analysis and some in fact argued the contrary view. Regardless, a reading of the internal documentation shows that the former view won out. In this discussion it should be remembered that the newspapers mentioned were English language publications and so were not read by the less educated segments of the Sri Lankan population.

Two books came out in this period which were also specifically mentioned by MSF-H. The first was *NGOs: Myths and Reality* which apparently gave a positive view of NGOs (a copy could not be located). It was hoped that that book could perhaps counterbalance the book launch of *Recolonisation: Foreign Funded NGOs in Sri Lanka*, by Susantha Goonatilake. Coinciding with the discussion of the relative merits of 'intellectual' versus 'sensationalist' newspapers, there was debate about whether new books should be used as indicators of attitudes since they were in English and were read only by educated elites; as such they would not be pertinent to the security concerns on the ground. One comment by a head of mission summed up this attitude: 'I don't know this book, but publishing a book makes no difference in the short run'. As with the above, what is interesting in these debates is the view that it was more important for the population to be influenced and have the correct view of INGOs than the political elites to share this view. This point will be discussed in more detail below.

Regardless of the outcome of the above debate, it is illuminating to review the main points from *Recolonisation* as they summarised nicely the common critique of NGOs. Although the book primarily concerned foreign funded national NGOs, the discussion helps to set the tone of how NGOs were in general viewed. The book discusses the policy change by Western donors and international

agencies where the choice was made to fund NGOs rather than governments. The stated reasons for this policy shift included: Developing countries were not democratic; their leaders were corrupt; their governments were not transparent; and their governments were prone to human rights abuses. Western aid and NGO funding was then ‘aimed at promoting and sponsoring areas of free association—civil society—in the developing world’.<sup>26</sup> This concept was presented as an ‘associational revolution’. The New Policy Agenda was also discussed, where markets should be privileged, the state should be rolled-back, the private sector developed, and NGOs supported.<sup>27</sup> On this view NGOs were also thought of by the donors as being more cost effective than governments. There was also a rise in political objectives in aid programming, such as democratic development and good governance. This analysis echoes that in the historical review of the relationship of states to aid actors presented in chapter one. The book continued with discussing the idea that ‘not only had NGOs become big business, they had become big government business. The role of government may have been shrinking in the developed and developing countries, but in the NGO sector it was increasing rapidly’.<sup>28</sup> It was necessary to describe the behaviour and effects of NGOs rather than take as a given that they were good.

Interestingly, from the Goonatilake’s standpoint the growth of Western funded NGOs and the rise of authoritarian government in Sri Lanka coincided. He argued that traditional Sri Lankan civil society—trade unions, political parties, local voluntary associations, and especially religious institutions, had been pushed aside by both foreign funded NGOs and the government. In his view foreign funded NGOs were involved with re-structuring the state, demobilising the armed forces, privatising foreign relations, and controlling the media and academia.<sup>29</sup> By doing so it had allowed the unfettered state to gain more power than it should have had. His message was clear—guard sovereignty by developing ‘real’ civil society over foreign-funded NGOs. The Bar Association is given as an example. ‘Unlike foreign funded NGOs, its membership, which compromises the country’s lawyers, is voluntary and its leadership freely elected’.<sup>30</sup> NGOs on the other hand were in competition with states or acted autonomously and tried to shape public opinion and influence international legal systems.<sup>31</sup> Two points summarise the role of the public in how NGOs were viewed: ‘The Sri Lankan public has been continuously and systematically brainwashed by the NGOs

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<sup>26</sup> Goonatilake, *Recolonisation*, p. 9.

<sup>27</sup> Goonatilake, *Recolonisation*, p. 20.

<sup>28</sup> Goonatilake, *Recolonisation*, p. 23.

<sup>29</sup> Goonatilake, *Recolonisation*, p. 10.

<sup>30</sup> Goonatilake, *Recolonisation*, p. 98.

<sup>31</sup> Goonatilake, *Recolonisation*, p. 16.

into accepting the loss of their sovereignty'.<sup>32</sup> And: 'The public takes a very negative view of these foreign funded NGOs, many of which have been criticised and lampooned in the newspapers'.<sup>33</sup> These last points are illustrative of the idea that the view of the general population was important in such discussions.

Much of this critique was not new and had been discussed before, but not in book form, and not written by a Sri Lankan for a Sri Lankan audience. It should be noted that there was of course some truth to the allegations and they were not completely unfounded. And although it may be true that the general population would not read such a work, that is not to say that, via the political elites, the ideas and concepts could not filter down into popular discourse. This last point was lost in the debate about the relative merits of the intellectual versus sensationalist press. Even if the idea that the beliefs and attitudes of the public were of most concern, the potential role of the political class in mediating the higher-level debates into the popular consciousness should not have been underestimated.

## **VI. Asian Way Desecuritisation?**

The above analysis shows that the process used by MSF-Holland to analysis and react to the situation mirrored that of the GoSL's, in the true sense of being the mirror opposite. Whereas the GoSL challenged the presence of NGOs and through discourse attempted to securitised them, MSF-H examined the actions and discourse of the GoSL and tried to improve their relationship through a process of desecuritisation. It is striking that one of the prime audiences for both parties was the general population. The GoSL wished to justify its actions in restricting access to INGOs and MSF-H wished to convince the general population that it was not a security threat, therefore decreasing its insecurity. Of course this was not the whole picture as MSF-H's relationship with the GoSL was constructed in other ways also. There were many communications—direct and indirect—between MSF-H and the GoSL, particularly related to MSF-H's request to the authorities to de-restrict its activities. But in each case the objective of the GoSL was to portray MSF-H as a threat and the hope of MSF-H was to convince relevant actors that it was not a threat. In this light the intellectual/sensationalist debate was informative. But in practice the population was not substantially engaged with, and other international actors, especially diplomatic actors, were in fact relied upon to provide leverage with the GoSL.

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<sup>32</sup> Goonatilake, *Recolonisation*, p. 128.

<sup>33</sup> Goonatilake, *Recolonisation*, p. 171.



One aspect missing from the attempted desecuritisation process, interestingly, was principles, particularly given how important principles normally were in negotiations and locating the organisations identity. The identity as presented by MSF was that of a medical organisation; the humanitarian norms sets was poorly represented in MSF's thinking and action. To MSF the core problematic was that there were needs, a lack of access, and something had to be done to rectify the situation. MSF also did not frame the situation in terms of dichotomies in the same way as did the GoSL, except for the Asian-Western pairing. To MSF the Asian way perspective was important in defining how the organisation approached the discursive practices of the GoSL. The other dichotomies used by the GoSL were barely represented in MSF's discourse analysis.

It cannot be concluded if the desecuritisation process as implemented by MSF was fully, or partially, responsible for the organisation's success in negotiation access in early 2007. As it is clear that not only MSF was affected during this period—all organisations had problems with access and administration, and NGOs in general were securitised in the press, it is doubtful whether MSF's actions had more than negligible effect, particularly since most organisations were able to return to a 'normal' situation in early 2007. This question, though, needs more research.

The next chapter will move on to the 2008-2009 period, as this era was the next major test for INGOs. Whereas the 2006 period was dominated by domestic issues, in the next period international influences increased. And if the extent of the securitisation process can be questioned in the 2006 period, with the situation 'going back to normal' by early 2007, it will be seen that there was no question about how far securitisation went in the next period, when bare life was exposed.

## **Chapter Six**

**2008-2009:**

**Securitisation Complete,**

**Bare Life Exposed**

### **I. Introduction**

The goal of this chapter is to analyse how the relationship between MSF-H and the GoSL developed in midst of deep crisis. The study period is bounded by two events—the expulsion of humanitarian agencies from the Vanni in September 2008 (ICRC and WFP were allowed to remain under certain restrictions), and the demand in April-May 2009 for international NGOs, including MSF-H and MSF-F, to sign confidentiality clauses as the price of renewing their MoUs. These clauses stipulated that all external communications had to be vetted by the relevant line ministries. In this period the GoSL's actions against NGOs of all types was harsh, and on both sides there was a serious lack of understanding and a clash of norms. This situation created difficult dilemmas for MSF-H, and in the end bare life securitisation could not be mitigated by desecuritisation activities. This chapter heavily relies on the primary source material as the goal is to discuss the actual discursive environment, not the political facts of the matter. Thus a few essential documents are focussed upon. There is also a paucity of literature on these themes from the humanitarian angle.

This period of time was chosen as it severely tested MSF-H's commitment to the Sri Lankan context. It was a period of crisis for INGOs as well as the Tamil population in the Vanni. The period between September 2008 and May 2009 saw realised a state of unmitigated securitisation of INGOs working in the conflict zone. Following Agamben's revision of Schmitt's concept of sovereignty,<sup>1</sup> if in 2006 organisations were, as discussed in chapters three to five, treated imperiously and were securitised, they were still engaged with by the state as entities considered to be legitimate parts of the political landscape. Notwithstanding the threat of being expelled from the country, which did not actually occur, organisations such as MSF considered that enough 'humanitarian space' existed to negotiate access to the conflict zones and in the end the GoSL allowed such access. In contrast, in the late 2008-early 2009 period agencies were stripped to their 'bare life' status. Like *homo sacer*, INGOs were excluded from the political realm as legitimate actors and could be dealt with as necessitated

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<sup>1</sup> See: Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998).

by national security requirements—metaphorically ‘outlawed’. Yet such agencies were allowed to remain physically present as they retained a potential usefulness, though as will be seen only on the periphery of the conflict. The bare life conceptualisation should not be overstretched, but simply utilised as a way to understand the spatial positioning of the actors and to frame the following discussion. In this analysis it will be discovered how far this metaphor holds. The key point is that INGOs in the September 2008 to May 2009 period were increasingly side-lined as relevant and legitimate actors and their voices quieted.

The penultimate section of this chapter will focus on the MSF-H reaction to the context of heavily decreased operational and witnessing space, particularly focussing on the question of operational relevancy. How does an organisation react to being completely blocked from working in its core operational space? And especially, how does an organisation consider the question of relevancy, particularly for an organisation with a dual mandate, where medical relevancy and advocacy activities do not necessarily overlap and in some cases interfere with each other? But first the reasoning behind the GoSL’s decisions will be described. In the end of the 2008 – beginning of 2009 period the GoSL had to manage a complex, intersecting set of objectives: To successfully end the war; to avert criticism by the international community concerning human rights abuses and lack of humanitarian assistance to the civilian populations in the Vanni; and to manage the agencies already operating on its territory. These objectives, and the actions the GoSL took, must be viewed against the domestic political and social situation outlined in previous chapters. The policy outcome of the GoSL’s deliberations of these overlapping objectives must be well understood to understand what MSF-H was reacting against and the limits to the possibilities for negotiation.

The structure of the chapter is thus to begin with a review of the building tensions between the GoSL and the LTTE and the consequent increasingly intensity of the conflict, then relate how the GoSL responded to international criticism of its human rights record and how its policies changed over time related to the presence of humanitarian international organisations in the conflict zone. It should be stressed that this chapter does not purport to give a comprehensive historical review of the end of the conflict or a detailed description of the international criticism of the GoSL during this period, as here the concern is with the policies and discourse of the GoSL at this time. Next the MSF-H response will be elaborated upon. The chapter will end with a concluding discussion of the dominant themes from this period.

## II. 2006-2009: Building Tensions—External and Internal

This section's narrative considers two parts of the above outlined triptych—the developments in the war and the GoSL's relationship with the international community related to the quickly worsening conflict.

Chapter five left the story at the beginning of 2007. For reasons as yet not well understood, the relationship between the GoSL and MSF-H had improved to the point that the organisation could re-start programming in early 2007. The context revolving around the conflict though had not substantially improved and neither had the tenor of the GoSL's relationship with the international community.<sup>2</sup> Whilst the conflict had for all intents and purposes re-started in 2006, the 2002 ceasefire agreement was not officially abrogated by the GoSL until January 2008. Nonetheless in the 2007 period a number of serious security incidents had occurred which left no one in doubt that the conflict had restarted in earnest. In March 2007 major fighting resumed in the Batticaloa area, resulting in the LTTE losing territory and pulling out of the coastal areas by April.<sup>3</sup> By July the GoSL had retaken control of the Batticaloa and Ampara districts. This period also saw the LTTE 'sea tigers' sustaining severe maritime losses by the Sri Lankan navy.<sup>4</sup> The GoSL's Anuradhapura airbase, the second largest in the country, was attacked by the LTTE at the end of October 2007, causing major damage. Fighting occurred in many other parts of the north and east and terrorist attacks continued in the south. Many have referred to this period as the 'undeclared Eelam War IV'. At the beginning of January 2008 the GoSL officially pulled-out of the 2002 ceasefire agreement, stating that the Tigers had to disarm before any future talks could go ahead. The Norwegian mediators were concerned about the implications of such a step, even if it was a symbolic act as the conflict had already heated-up substantially.

The conflict continued to intensify throughout 2008. In mid-2008 two major LTTE bases were overrun by the SLA as the LTTE were pushed further north into the Vanni. The fighting quickly escalated in 2009. On 2 January Kilinochchi fell, followed a week later by the Elephant Pass redoubt. On 25 January Mullaitivu was taken, forcing the LTTE to fall back to Puthukkudiyiruppu where its

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<sup>2</sup> The term 'international community' is used to refer to international actors whose nexus was outside of Sri Lanka, for example governments and international human rights and advocacy organisations. Implicit in the term international community is a Western centre of gravity.

<sup>3</sup> G.H. Peiris, *Twilight of the Tigers: Peace Efforts and Power Struggles in Sri Lanka* (Oxford: Oxford University Press, 2009), p. 225.

<sup>4</sup> Peiris, *Twilight*, p. 226.

main defensive line would remain until April. The final military push began from mid-April. This was the period of ‘hostage rescue’ often referred to by the GoSL.<sup>5</sup>

The human rights implications of the fighting did not go unnoticed by an increasingly concerned, and vocal, international community. As such this period of deepening conflict has been termed by Peiris as the ‘human rights onslaught’ by external actors, mirroring the military onslaught by the SLA against the Tigers. In Peiris’ view:

The period has also been featured by an extraordinary sharp upsurge of external humanitarian intervention in the Sri Lankan conflict, the intensity of which has had a remarkable correspondence with the tenor and tempo of LTTE failures. There are strong indications of this concomitance representing a causal connection in the sense that the outcry against alleged human rights violations in Sri Lanka is, at least in part, the product of a well-orchestrated attempt to rescue the LTTE from impending doom.<sup>6</sup>

This passage encapsulates a common view amongst the Sinhalese elites which was mirrored in press reports of the time. It is interesting to note the confusion between the terms ‘humanitarian’ and ‘human rights’, a common occurrence not only in the Sri Lanka of this period. Though both human rights and humanitarian agencies share a concern for the state of humanity, they differ in their programming, as humanitarian organisations provide aid to populations suffering from conflict as well as man-made and natural disasters, and human rights organisations are concerned with how states fulfil their duties to protect their population’s basic rights as humans. Humanitarian organisations tend to favour material engagement where human rights organisations base their interactions with states on legal grounds and advocacy. Of course, humanitarian organisations are often concerned with the legal context, but the point of reference is most often International Humanitarian Law—the ‘law of war’, rather than International Human Rights Law, which is applicable at any time and in any context. An overlap can occur when humanitarian organisations engage in advocacy activities, and it has often been the case with MSF that advocacy on humanitarian issues has been confused with human rights advocacy. Thus, each type of organisation engages with such contexts but have decidedly different objectives and ways of operating. For a concrete example, MSF-H was interested in providing medical assistance to those in the conflict zone, whilst Human Rights Watch was concerned with monitoring how the Government of Sri Lanka treated the same populations from a human rights perspective. The misunderstanding of the differing mandates of the

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<sup>5</sup> Weiss, *Cage*, p. 210.

<sup>6</sup> Peiris, *Twilight*, p. 232.

two sets of organisations is illustrative of the misgivings in the minds by state officials concerning international engagement in times of conflict.

The use of the term intervention is also notable with its implied fear of attack on the Sri Lankan polity. The concept of a humanitarian intervention relates more commonly to situations where states intervene militarily in another state to protect populations in danger and facilitate their reception of humanitarian assistance. Humanitarian interventions currently often fall under the Responsibility to Protect rubric. Again, although similar in motivation—providing protection to conflict-affected populations, the work of human rights agencies, which the GoSL was referencing in its criticisms, could not be considered analogous to states conducting a humanitarian intervention. And, needless to say, humanitarian interventions by states were equally not analogous to non-governmental humanitarian organisations which based their action on principles which created distance between themselves and states—their own states included.

A discussion of this theme gives a sense of the changing atmosphere related to the engagement of international actors with the conflict, therefore a review of how the international response to the escalating conflict was responded to by Sri Lankan authorities is in order. The Minister of Disaster Management and Human Rights, Mahinda Samarasinghe, as well Prof. Rajiva Wijesinha, Secretary General of the Peace Secretariat and Secretary to the Ministry of Disaster Management and Human Rights, in the 2008-2009 period shuttled between Geneva and Colombo in order to defend the GoSL against increasing international criticism.<sup>7</sup> Wijesinha made repeated statements to various human rights fora as the GoSL point-man to respond to criticism of the government's human rights record. Such criticism revolved around concerns that civilians were being targeted by the Sri Lanka military, that those displaced by the fighting were not receiving proper aid, and that torture was being used on a wide scale.<sup>8</sup> As an example of discourse used, in a piece from 6 March 2009 entitled 'The great white authorities of Human Rights Watch', Wijesinha, describing the Interactive Debate on the Report of the High Commissioner for Human Rights in Geneva,<sup>9</sup> remarked on recent statements by

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<sup>7</sup> Weiss, *Cage*, p. 141.

<sup>8</sup> See, for example: Unattributed, *Island of Impunity? Investigation into International Crimes in the Final Stages of the Sri Lankan Civil War*, Public Interest Advocacy Centre, February 2014; US state Department, '2008 Human Rights Report', Bureau of Democracy, Human Rights, and Labor, 25 February, 2009, <http://www.state.gov/j/drl/rls/hrrpt/2008/sca/119140.htm> [last accessed 25 March 2015]; and Human Rights Watch, 'Sri Lanka: Human Rights Situation Deteriorating in the East: Armed Faction is Killing, Kidnapping Civilians', 24 November 2008, <http://www.hrw.org/news/2008/11/24/sri-lanka-human-rights-situation-deteriorating-east> [last accessed 25 March 2015].

<sup>9</sup> See: Office of the High Commissioner for Human Rights, 'First annual Interactive Debate of the Human Rights Council on key legal measures for ratification and implementation of the CRPD', 6 March 2009, <http://www.ohchr.org/EN/Issues/Disability/Pages/FirstDebate.aspx> [last accessed 25 March 2015].

human rights NGOs. He thanked the NGOs for their ‘sterling performance’, as their childishness and entertainment value made it worthwhile for him to spend the GoSL’s scant money to stay in freezing Geneva; money the NGOs had ‘to burn’, but a responsible state did not have available to spend on such luxuries. Human Rights Watch (HRW), particularly, was ‘irresponsible’; he alleged that they had refused him a meeting. It was claimed that their analysis was not based on information from actual Sri Lankans, but instead relied on ‘great white authorities’. Interestingly, as seen in 2006, statements by the ICRC were brought in to prove his points. In his view HRW was trying to interfere with the good relationship between the GoSL and agencies doing good works. Amnesty International, on its part, was also a member of a ‘coterie of self-sustaining hysterics’. The Western press he claimed was understood by all to be ‘sensationalistic and confrontational’, though he admitted it could not be blamed for these attitudes as it was ‘a result of cultural conditioning’. But when such a press included in its reporting allegations that were ‘made use of by terrorists, then really some moral self-questioning should be in order’ by the Western press. Again, one of his basic questions was why such Western human rights organisations, and the Western press, were not as critical about the behaviour of the LTTE. There was a perceived imbalance in how the international community approached the conflict.

What should be taken away from the above discussion is the increasing dissatisfaction on the part of the GoSL to perceived double standards on the part of the international human rights community in how they approached the conflict. Even if it were admitted that there were legitimate human rights issues to be addressed, the GoSL refused to be considered the sole perpetrator, as the LTTE was also a human rights abuser.<sup>10</sup> The fact of this perceived double standard said something essential to the GoSL about the bias of the international community, which was against the GoSL and supportive of the LTTE. In many ways international organisations of whichever type—humanitarian or human rights, were lumped together as threats. The message to the GoSL was that it had to protect itself against this fact by taking a strong, proactive, stand. Part of this stand, as will be seen in the next section, was to ensure adherence to international legal norms.

This then was the context within which the GoSL and international organisations in the country were working in 2008. Referring back to the conceptual framework, organisations working in the country were the external working in the internal. The GoSL could try to manage human rights organisations, and even the UN, at a distance through conversations in Geneva, but there were also agencies which

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<sup>10</sup> Such comments of course beg the question of whether the LTTE, as a non-state actor, was legally capable of human rights abuses or whether by assigning such culpability to the LTTE the GoSL inadvertently put them into a category of legitimacy the GoSL had always sought to deny them.

were working in the country which had to be managed. The confusion between human rights and humanitarian intervention, and also between state sponsored humanitarian interventions and humanitarian activities operated by INGOs, created an especially muddled context. The next section will examine how the GoSL reacted to this situation before the MSF-H response to these reactions is analysed.

### **III. 2008-2009: The GoSL Reacts to the External in the Internal**

The first two GoSL concerns were reviewed above—the war and the response to the human rights criticism of the international community. This section will describe the policies the GoSL put into place and the discourse governmental authorities used related to the work of NGOs. The three issues to be discussed are: The expulsion of INGOs from the Vanni in September 2008; the issuance of the interim report of the Parliamentary Select Committee on NGO abuse, and the demand of confidentiality clauses as the price of renewing MoUs. It must be remembered that in this period ‘intimidation and restrictions on access meant reports on the war were consistently pro-government’, and that journalists were under constant threat of attack.<sup>11</sup>

#### **3.1. The September Expulsion**

The issue surrounding the expulsion of INGOs from the Vanni in September 2008 is rather complicated but speaks directly to the discussion of the three Sri Lanka governmental objectives above: The need to end the war; the need to respond to the attitude of the international community concerning its prosecution of the war; and the need to deal with the presence of international organisations on its territory which were concerned with the humanitarian response to the war.<sup>12</sup> The three issues of course overlapped and it was this fact that made decision-making a complex calculation. Finishing the war took priority. But as part of ending the war the GoSL had to be concerned with accusations of human rights abuses and the above discussion has given a hint of how those were forestalled.<sup>13</sup> The international community also expected that the GoSL would conform to the norms of International Humanitarian Law and would ensure the proper provision of humanitarian assistance.<sup>14</sup> This necessitated that the external agents attempting to operate on their

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<sup>11</sup> Keen, “The Camp”, p. 11.

<sup>12</sup> See: Harrison, *Counting the Dead*, p. 13-30 for a discussion of the expulsion from the UN's perspective.

<sup>13</sup> See: Francis A. Boyle, *The Tamil Genocide by Sri Lanka: The Global Failure to Protect Tamil Rights Under International Law* (Atlanta: Clarity Press, 2010) for a discussion of legal issues from a decidedly pro-Tamil perspective.

<sup>14</sup> For a grounding in International Humanitarian Law, see: Adam Roberts and Richard Guelff (eds.), *Documents on the Laws of War* (Third Edition) (Oxford: Oxford University Press, 2004); A.P.V. Rogers, *Law on the Battlefield* (Second Edition) (Manchester: Manchester University Press, 2004); Antonio Cassese, *International Law*



territory be managed properly—to the satisfaction of the international community *and* to conform to internal political and military demands, the greatest of which was to not interfere with the successful prosecution of the war. A solution had to be found to satisfy these conflicting objectives and perspectives. Some clues to the GoSL's thinking can be found in the Lessons Learnt and Reconciliation Commission report which will be describe next.

Within the context of international criticism of the government's conduct at the end of the war, President Rajapaksa instituted in May 2010 the Commission of Inquiry on Lessons Learnt and Reconciliation to study the period between 21 February 2002—the date of the ceasefire agreement, and 19 May 2009—the date of the final victory over the LTTE. The commission itself began work in September of 2010 and produced its report in November of 2011. Though written well after the end of the period examined in this chapter, the Lessons Learnt and Reconciliation Commission (LLRC) report gives a good review of the government's justifications, views, strategy, and considerations during the final phase of the conflict.<sup>15</sup> It is useful to make reference to the document to find clues to help answer the question of why INGOs, but not the ICRC or WFP, were expelled from the Vanni at the end of 2008.

First it must be made clear the International Humanitarian Law (IHL) underpinnings of humanitarian aid in times of conflict as presented, correctly according to international standards, by the LLRC. This is a sometimes controversial topic within the humanitarian aid world particularly in relation to negotiating humanitarian access to zones of conflict. Although the legal statement of principle is relatively straight forward, the actual implementation of the concepts is often troublesome—for states and international actors alike. The LLRC's summary of the IHL requirements will be used as the basis for this discussion. The LLRC report makes two introductory statements on this topic.

First:

It is a requirement of IHL, that parties to a conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need. Accordingly IHL prohibits the starvation of the civilian population as a method of warfare. Corollary to this prohibition is the rule requiring respect for and protection of humanitarian personnel and relief objects.

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(Oxford: Oxford University Press, 2001); Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), *Customary International Humanitarian Law: Volume 1: Rules* (International Committee of the Red Cross) (Cambridge: Cambridge University Press, 2005); and Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), *Customary International Humanitarian Law: Volume 2: Practice* (International Committee of the Red Cross) (Cambridge: Cambridge University Press, 2005).

<sup>15</sup> Lessons Learnt and Reconciliation Commission (LLRC) Report, Government of Sri Lanka, November 2011.

The safety and security of humanitarian relief personnel is an indispensable condition for the delivery of humanitarian relief to civilian populations in need, threatened with starvation.<sup>16</sup>

From the humanitarian international organisation perspective the first statement encapsulates what is felt to be the essential issue—that states, and non-state armed actors under certain conditions, must facilitate humanitarian relief, and thus must facilitate their access. The condition of safety and security is also important and the onus is put on those parties controlling a specific territory to provide such conditions.

And second:

IHL requires the consent of the parties to a conflict as being essential in order for relief actions to take place.<sup>17</sup> Further, while consent may not be withheld for arbitrary reasons, state practice recognizes that the state concerned exercises control over the relief action and has a central coordinating role to perform in the distribution of relief within its territory. In addition, humanitarian relief personnel must respect domestic laws on access to territory and must respect the security requirements in place in the host state.<sup>18</sup>

One can see how a state would be sympathetic to this passage, as it provides an ‘out’ for a state when considering granting access to an humanitarian international organisation. A state cannot arbitrarily deny access but this implies that there may be legitimate reasons for blocking access. Regardless, the state is given a coordination role and international actors have obligations on how they should behave on a state’s territory.

With this background in mind, the key findings from the LLRC report which pertained to humanitarian assistance and the role of international aid actors will be examined. Through this examination a better understanding of the GoSL’s decision-making in September 2008 will be gained.

On the issue of the provision of humanitarian assistance in the period between September 2008 and May 2009, the clear message throughout the relevant sections of the LLRC report was that, since the ICRC and the WFP food convoys were allowed into the Vanni, the IHL provisions concerning relief were adhered to.<sup>19</sup> This allowed the GoSL to relocate the offices of the UN and INGOs to Vavuniya,

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<sup>16</sup> LLRC, p. 45. A LLRC report footnote states that: ‘In a Resolution 1296 adopted in 2000 on Protection of Civilians in Armed Conflicts, the UN Security Council called upon all parties to an armed conflict including non-state parties ‘to ensure the safety, security and freedom of movement of humanitarian relief personnel’.

<sup>17</sup> A LLRC report footnote states: ‘This is recognized in both Additional Protocols (I) and (II) to the Geneva Conventions’.

<sup>18</sup> LLRC, p. 45. A LLRC report footnote states: ‘Customary International Humanitarian Law. Vol. 1; Rules; Ch. 17. p. 197, fn.80 and 81’.

<sup>19</sup> LLRC, p. 331.

located on the government side of the old Forward Defence Line, where they could, in safety, ‘complement’ government efforts directed through government channels. The MoD opened the convoy routes to be used.<sup>20</sup> The document repeatedly states that the ICRC and the WFP supported the GoSL in providing humanitarian assistance. Until March the GoSL was able to adequately supply humanitarian aid to the conflict-affected civilians but it was admitted that in April relief supplies were less than adequate.<sup>21</sup> Food supplies were delivered by sea between February and May by the ICRC, the WFP, and the GoSL, as the land route was no longer tenable.<sup>22</sup> The similarity to the 2006 period in this regard should be noted, as some patterns remained constant over time.

The report claims that the international community had made no complaints about the supply of humanitarian aid due to conflict or natural disasters until the final phase of the war, which as has been seen was not completely true. In the GoSL’s view it had taken ‘all possible steps’ to deliver food and medical supplies with the support of the ICRC, the WFP, and local civil society organisations. These activities were ‘in a spirit of international co-operation and solidarity’.<sup>23</sup> The MoH was said to have taken responsibility for the provision of medical supplies along with the ICRC. What was not mentioned was the medical aid given by MSF and other INGOs up until the expulsion.

It should be mentioned that the ICRC was the logical agency to which to facilitate access as it has a formal mandate under IHL—ICRC is, indeed, the guardian of IHL, and based on past performance the GoSL believed that it could be trusted to keep silent about what it witnessed. This last point was optimistic on the government’s part as shall be seen.

Thus the LLRC report clearly gives a justification for the expulsion and an explanation of its rightful conduct (though not stating this conclusion explicitly). This logic underpinning the expulsion responded to all three concerns as described above: It gave the GoSL as free a hand as possible to end the war without undue interference; it allayed, at least partly, the concerns of the international community regarding humanitarian assistance via its adherence to IHL; and the undesirable agencies were side-lined through an expulsion which was explained as being in their own best interests.

How then was this logic and decision-making explained by the GoSL to both the Sri Lankan public and international actors? As with the securitisation process described in the previous chapters discourse played an important role in the management of the INGO threats. An *Island* article from

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<sup>20</sup> LLRC, p. 85.

<sup>21</sup> LLRC, p. 87.

<sup>22</sup> LLRC, p. 124.

<sup>23</sup> LLRC, p. 126.

10 September sums up the story. Defence department spokesman Minister Rambukwella was quoted as saying that the GoSL could not assure the safety of NGOs in the Vanni and thus they needed to relocate to a safer zone. The message was clear—legitimate INGOs were at risk and the government was acting responsibly. And, in addition, there was always the risk that they were really there to help the LTTE. So even in this way the government was acting responsibly by clearing the way for the successful prosecution of the war. There was thus a dual message which gave flexibility in reaction. Again, the similarity between this discourse and argumentation to the 2006 period should be noted, though the outcomes were qualitatively different.

### 3.2. The Parliamentary Select Committee Interim Report

The Parliamentary Select Committee investigating the work of NGOs was last discussed when it was in the midst of its investigation and it was contributing to the negative discourse surrounding NGOs in the 2006 period. The PSC's 'interim' report' was not in fact published until the beginning of December 2008. A careful reading of the report calls into question whether any substantive investigative work was conducted in the 2007-08 period, an observation which challenges the timing of the report. Regardless, it is constructive to review how the interim report was reported on at the crucial period at the end of 2008. An interview with JVP MP Vijitha Herath, chairman of the committee, serves this purpose.<sup>24</sup> The key messages from the interview were that some NGOs were supporting the LTTE—directly and indirectly, and the current laws were not adequate to properly police such NGOs. Herath said that 'no proper bodies' existed to monitor NGOs, their funds were not audited, and their activities were not evaluated. Although the NGO Secretariat had been set-up to coordinate NGOs it was not up to the job. In general he thought that 'most of these NGOs operate in contravention of the law and the state policies', seemingly condemning as illegal and illicit the majority of NGOs. Additionally, he thought that NGOs functioned according to their own agendas and were 'controlled by their mother countries'. As such, some NGOs were a threat to the sovereignty of Sri Lanka and had 'overstepped' their developmental and humanitarian mandates.

Herath was asked about the fact that NGOs had 'mushroomed' after the tsunami and some had tried to 'indirectly' interfere in state affairs. In his opinion some had 'strategically' tried to be involved with defence and education matters, and on the whole international interference into the internal affairs of the country had increased. Those engaged with conflict resolution and conflict studies were the most prone to interference. These types of NGOs also voiced most stridently the 'public sector

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<sup>24</sup> S. Sriyananda, 'How NGOs Threaten Sovereignty of State', *Sunday Observer*, 21 December 2008.

institutions are inefficient' approach to development, thus wishing to bypass the government. And on the humanitarian side, NGOs were helping the LTTE, though it couldn't be said exactly in which way NGOs had assisted the LTTE; nonetheless, it was evident that 'half of these organisations in the North and East have helped the LTTE in some manner'. Some NGOs had also been found to be 'propagating federalism', such as the National Peace Council, which had also 'participated in a protest in Geneva with the LTTE'.<sup>25</sup>

How had such NGOs with 'close links with some of the terrorists organisations' entered into Sri Lanka in the first place? Herath responded that legal mechanisms to register NGOs were lacking. 'The vacuum has created a huge freedom for those NGOs', which was of course not the opinion of NGOs as has been seen. Did the country really need NGOs? He couldn't say no, that they were not needed given the conditions in the country, and not all were of course bad, and some in fact were genuine and did assist the 'development process'. But, 'some NGOs with devious motives bring disaster to the country', as the 'laws related to forming NGOs are very lenient'. Particularly related to humanitarian assistance, did they actually do any good? 'Some of them are doing an excellent service but those who have links with the LTTE pose a threat'. How should the NGOs doing such damage be punished? 'We need new laws to blacklist them'.

MSF was mentioned specifically in the interview, as it was in the report. Herath stated that 'the Ministry of Defence has reports to show how the Medical Sans Frontieres (sic) (M.S.F.) of France and MSF Spain which is not registered, Medicine du Monde France and Doctors of the World USA have threatened the national security and the state policies'. In the interim report itself, under the heading 'Threats to National Security', it was stated that 'the Ministry of Defence had received credible intelligence reports with regard to the activities of the following non-governmental organizations. These organizations had dared to act in a way that threatened National Security and state policies'. MSF-F, MSF-E (the section was again claimed not to be registered), MDM-France and Doctors of the World USA were again mentioned. In addition:

The non-governmental organizations which had met at the office of MSF (France) located at Narahenpita had vehemently criticized the policies followed by the Department of Immigration and Emigration in issuing visas and had discussed a programme of getting the

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<sup>25</sup> It should be mentioned, though, that not all opinions were in line with this view. In the words of Basil Fernando from the Asian Human Rights Commission: 'If the abuse of funds was what the Select Committee was interested in, the Interim Report demonstrates an absence of seriousness. It is perhaps, what in the local Sri Lankan parlance would be called, trying to light a cigar when the moustache is burning. In short, the report borders on being nonsensical'. Asian Human Rights Commission, 'Sri Lanka: The Interim Report of the Parliamentary Committee on NGOs is flawed from the point of view of policy, science and law', 12 December, 2008, [http://www.humanrights.asia/news/ahrc-news/AHRC-ART-044-2008#.Ulu\\_Sdcf1yk.email](http://www.humanrights.asia/news/ahrc-news/AHRC-ART-044-2008#.Ulu_Sdcf1yk.email) [last accessed 25 March 2015].

LTTE to send threatening letters as a solution. The Ministry of Defence, having considered this as a very grave issue, even went to the extent of banning the issue of visas.<sup>26</sup>

This was a reprise of the old stories from 2006 which had caused so much consternation within MSF. But as opposed to 2006, this further mention of MSF in connection to these charges went unremarked upon by MSF at the end of 2008, presumably as this was a period when all access to the conflict zones had been barred and there were more pressing issues to which the organisation had to attend.

It was, clearly, not precisely true that there were no bodies to monitor NGOs, at least from the INGO perspective, as the fact of such bodies was a constant complaint, bitterly made, as was the weight of the administrative burden INGOs faced. It is difficult to reconcile the day-to-day reality of INGOs with this rhetoric. The ‘mother ship’ accusation and the idea that INGOs had their own agendas which they followed is illuminating and pointed to a fundamental misunderstanding of the humanitarian project on the part of Sri Lankan officials. This phenomenon—the misunderstanding of the external by the internal, will be discussed later in this chapter by a MSF-H official. As per both their mandates and their principles INGOs did, of course, have their own agendas and took seriously the fact that they were *non-governmental* agencies which were independent from the relevant governments involved, and neutral concerning political and military controversies. Related to this point their self-identity were as *international* NGOs, again separated from the local governments with which they engaged. International organisations did not represent Sri Lankan political interests, but neither did they necessarily represent the political interest of their home countries; in fact, for principled humanitarian agencies it was important that they did not.

Two recommendations should be commented upon from the interim report itself. Recommendation number 15 stated that:

NGOs should pay strict attention to national identity, national security, territorial integrity, customs and rituals, values and culture of the country and the commission [to be newly set-up to monitor NGOs] should compile a set of guidelines restraining NGOs from taking action to destroy or distort them or to create a sense of dependant mentality in the people.<sup>27</sup>

That INGOs were often insensitive to the local context was commented upon by MSF itself. The misunderstanding of the domestic by the external was not an unreported issued by either party.

Recommendation number 11 stated, in part, that: ‘Without stopping at extraditing the heads of NGOs against whom allegations are levelled for irregularities/misconduct, legal provisions should be

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<sup>26</sup> PSC, ‘Interim Report’, pp. 27-28.

<sup>27</sup> PSC, ‘Interim Report’, p. 49.

enacted to totally ban such NGOs'.<sup>28</sup> The harshness of this recommendation should be reflected upon, for this was the 'outlawing' provision. In effect, license was given to the internal to place external actors outside the political and legal realm. How, and how completely, INGOs were to be outlawed, is the dominant theme of this period.

The PSC then reconfirmed their previous impressions and restated their old accusations—giving further credence to the actions already taken and would soon be taken by the government. It is informative to observe how another organisation responded. In an article in the *Sri Lanka Guardian* the National Peace Council (NPC) responded to the allegations made against it.<sup>29</sup> NPC stated that 'we regret that the comments on NPC are unjust, and do not give a proper representation of NPC objectives and work'. They stressed that the NPC was a non-partisan organisation, was independent of political actors, and was not biased towards the LTTE. The NPC had also never advocated for the division of Sri Lanka into two political units, but had called 'for a political solution to the ethnic conflict that includes inter-ethnic power sharing, with a federal solution as one possible and positive option'. The NPC hoped that the PSC's final report would be fairer in its evaluation of 'the organization, its mission and its contribution towards ensuring people's participation in a peaceful and just solution to the ethnic conflict'. These comments by the NPC reflects the general NGO response to the PSC interim report, that it was incorrect in how it portrayed the mentioned NGOs. It also points to the misunderstanding of drives between the external actors and the GoSL.

### 3.3. The Confidentiality Clause

In April 2009 the GoSL issued a new decree that organisations, in order to renew their Memoranda of Understanding (MoUs), or negotiate new agreements, had to agree to and sign 'confidentiality clauses'. These clauses barred independent public communications by agencies without governmental approval. MSF-H believed that these were a result of earlier ICRC and MSF communications which had embarrassed the government.<sup>30</sup> ICRC had in fact, regardless of the trust the GoSL had put into the organisation to remain silent, issued a statement on 28 January saying that hundreds of civilians had been killed in the fighting, a statement the GoSL wholly disagreed with.<sup>31</sup> The ICRC office in Colombo was stoned by a mob soon after, reportedly as a result of the statement.<sup>32</sup>

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<sup>28</sup> PSC, 'Interim Report', p. 48.

<sup>29</sup> *Sri Lanka Guardian*, 23 December 2008, <http://www.srilankaguardian.org/2008/12/response-to-interim-report-of.html> [last accessed 25 March 2015].

<sup>30</sup> HAD, 'Line in Sand', p. 31.

<sup>31</sup> Weiss, *Cage*, pp. 127-28.

<sup>32</sup> Weiss, *Cage*, p. 177.

For any given organisation the clause referred to the relevant line ministry which supervised the agency. For MSF MoUs were negotiated with the Ministry of Health (MoH). The MSF confidentiality clause thus stated that:

The partner shall strictly maintain the confidentiality of the information on service provision. All information regarding the construction or service provision shall be provided to the MoH and no public comments shall be made by the partner, without the concurrence of the Secretary, Ministry of Health.

MSF-H was faced with signing the confidentiality clause in May 2009 as its MoU expired at this time. MSF-F had signed its MoU with the confidentiality clause earlier in April. MSF-H's rationale for signing such a clause will be discussed in the next section. But from MSF's perspective it was clear that by April it had to be increasingly wary of communicating publically about the conflict.

It will be noted that during this period there were a number of (attempted) visits by international diplomats to Sri Lanka. Carl Bildt, former Swedish prime minister, attempted to visit but was refused entry. David Miliband, the British foreign minister and Bernard Kouchner, the French foreign minister both made visits. It should also be noted that at this time there was an active debate surrounding the estimates of the number of trapped and displaced, including a statement by the UN High Commissioner for Human Rights N. Pillay in March, going against the UN's previously discrete stance on numbers.<sup>33</sup> Although the UN was attempting to be sensitive to the GoSL's dissatisfaction with how the conflict was being reported, particularly concerning estimates of the numbers trapped by the fighting, an increasing amount of frustration was felt by many international actors about the lack of clarity. This situation only increased the GoSL's view that international actors needed to be quieted. Part of the way to manage any negative consequences of the presence of international actors was to institute a 'gag order', as MSF-H termed the confidentiality clause. Eliminating the physical presence of INGOs in the conflict area was an important step but the continued presence of INGOs in-country still risked agencies being able to speak out, as organisations such as MSF-H were still present in-country attending to medical needs of those fleeing, if not present in the conflict zone itself.

Given this situation—of physical exclusion, continuing negative discourse, and an attempted devoicing of critics, how did MSF-H interpret and respond to the situation? This question will be examined in the next section.

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<sup>33</sup> Weiss, *Cage*, p. 205.



#### IV. The MSF-Holland Response<sup>34</sup>

This section will first examine the September 2008 expulsion period and analyse the rationale for MSF-H's decision not to speak out about the lack of access. Next the internal MSF-H debates about whether or not to sign the confidentiality clause will be uncovered. This section will end with a discussion of the larger issues the September 2008 to May 2009 period brought forward to the organisation.

A caveat to this discussion is that there are obviously different perspectives concerning this period. The introduction mentioned briefly the views of Keen, Niland, and Labonte and Edgerton, which reflected a focus on the GoSL's instrumentalisation of aid. This thesis does not contradict this view; but neither does it try to prove it. Rather it focusses on other aspects of the interaction, primarily the securitisation angle. Regardless, to provide a well-rounded view of the period alternative perspectives must be mentioned which may give a complementary complexion to the following discussion.

In relation to instrumentalisation of aid by the GoSL, Keen speaks about the fact that the Sri Lankan government succeeded in bullying and deceiving 'the international community' into surrendering not only its voice but a great deal of its neutrality, with extremely damaging results.<sup>35</sup> The aid community was forced into the commonly referenced 'access versus advocacy' dilemma.<sup>36</sup> This created a situation in which aid actors 'meekly complied' with the demands of the GoSL.<sup>37</sup> Aid actors then traded 'quietude for access'.<sup>38</sup>

Niland shares this basic analysis and talks about 'the general reluctance of the relief system to challenge the instrumentalisation of humanitarian action'.<sup>39</sup> It is unclear, though, what the aid community should have done to rectify this situation. Labonte and Edgerton concur with Niland's view, stating that the 'near total absence of effective engagement on the issue of humanitarian access and protection' by political actors left the humanitarian community on its own to deal with the government.<sup>40</sup> And this engagement was a failure.

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<sup>34</sup> This section is based on internal MSF documentation as well interviews with senior MSF-Holland managers who held positions of responsibility for the Sri Lankan mission, in the Amsterdam headquarters and in Sri Lanka, during the 2008-2009 period.

<sup>35</sup> Keen, "The Camp", p. 3.

<sup>36</sup> Keen, "The Camp", p. 6.

<sup>37</sup> Keen, "The Camp", p. 7.

<sup>38</sup> Keen, "The Camp", p. 14.

<sup>39</sup> Niland 'Sri Lanka', p. 6.

<sup>40</sup> Labonte and Edgerton, 'Typology', p. 48.

How much a part of this international (humanitarian) community was MSF-H? MSF-H did not frequently interact with other actors if it was not considered to be useful. Very little in the MSF-H documentation refers to interactions with other agencies. There were of course *ad hoc* interactions but they were not systematic in nature. This points to the fact that not all humanitarian actors conducted themselves in the same manner but were able to make their own decisions based on their own views, mandates, and histories.

#### 4.1. The Expulsion and Fall-out

To MSF-H the ‘expulsion’ of INGOs from the Vanni was considered to be less an expulsion and more a conscious choice by the organisation to temporarily withdraw from the Vanni, but which unfortunately turned into a longer-term denial of access. As with other agencies MSF-H was given strong advice by the Sri Lankan authorities to leave the conflict zone on security grounds, as the government claimed that it could not guarantee organisations’ security. MSF-H was as well not on the list of organisations which were allowed to operate in the Vanni (such as the ICRC and the WFP). For various operational and human resources related reasons, MSF-H made the decision to leave with the expectation that the organisation could regain access later, but this did not happen as quickly as expected. Indeed, operational access to the Vanni was not re-gained during the remainder of the period under study in this chapter. Regardless, for convenience sake the September departure from the Vanni will be referred to as ‘the expulsion’ as this is the common term used in the MSF-H documentation and by those interviewed. After the expulsion MSF-H remained in its pre-existing Vavuniya base and MSF-F stayed at their Port Pedro site.

The key question to be examined here is why MSF-H chose not to denounce the expulsion. The organisation fully expected, as did all other observers, that the conflict would escalate, and as such there would be a future role for an emergency humanitarian medical organisation. At issue was whether speaking out about the expulsion, or more precisely the denied access to the Vanni, would improve the likelihood of gaining access or would hinder a successful negotiation. In the end MSF-H decided that speaking-out would not in fact help the situation and therefore decided not to speak out publically about the lack of access. The rationale for this conclusion can be summarised in the following explanation from a senior manager’s after-the-fact evaluation of the organisation’s decision-making during this period: ‘If Ban Ki Moon, Obama, Milliband and Kouchner couldn’t get INGOs access then MSF wasn’t going to be able to influence the situation’.<sup>41</sup> As mentioned a number

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<sup>41</sup> MSF-Holland General Director (MSF-H GD), ‘Chrono, Negotiations & Outcomes of MSF’s Serendib Negotiations’, MSF-Holland, Amsterdam, February 2010.

of diplomats had visited, or tried to visit, Colombo, but each in their own way had failed to convince the government to slow down the advance or moderate the intensity of the fighting to lessen the conflict's impact on civilians. This was a humble, yet realistic, appraisal of the organisation's lack of leverage to influence the decisions of the government concerning access to the conflict zone. In addition, if diplomatic representatives of the international community were often accused of being LTTE supporters at heart, then MSF understood that 'NGOs like MSF that [had] only worked on one side of the conflict (with the Tamil population) were viewed as being less than neutral'.<sup>42</sup>

Notwithstanding this pessimistic assessment of the organisation's position, there was also a hopeful side to the analysis. Though MSF felt that it had been grouped together with the rest of the international community in the minds of the Sri Lankan authorities—and negatively at that, it was also believed that MSF had through its history established for itself a unique space which could be utilised in negotiations. For, unlike most other NGOs, MSF had not newly arrived in the post-tsunami reconstruction phase and its presence had always been related to the conflict. Whilst this fact had meant that the organisation had often had a tense relationship with the government, and as mentioned there was a residual impression of a lack of neutrality, MSF had also been 'responsible for the bulk of the delivery of healthcare to the LTTE-controlled area during the worst of the conflict, and we did so responsibly and in ongoing dialogue with the government'.<sup>43</sup> This history of cooperation, relevancy, and usefulness was considered an asset when entering into negotiations over access.

The organisation's history therefore was a two-edged sword—the operational history was viewed as a potential drawback in that the focus on the conflict-affected Tamil population probably called into question the organisation's neutrality, but that long history was also a positive era of negotiation and operational relevancy which had been respected by the government. Though probably a fair assessment of the impact of the organisation's history, for the September 2008 to May 2009 period the negative aspects of this history won out as far as accessing the Vanni was concerned. It is in fact the argument of this chapter that a complete securitisation process had been put in place during this period where INGOs were stripped to their bare life status and in effect outlawed to the periphery, regardless of their past performance or identity.<sup>44</sup> The government was adamant in how it portrayed the situation and its prosecution of the war was to continue in the same vein until the final defeat of the Tigers. This was a period when the conflict was being labelled a humanitarian rescue operation

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<sup>42</sup> HAD, 'Sri Lanka: Context Analysis and Strategic Direction', MSF-Holland, Amsterdam, 28 May 2009.

<sup>43</sup> HAD, 'Context Analysis and Strategic Direction'.

<sup>44</sup> Again, differentiation must be made between INGOs and the ICRC and the UN which both had official and legal status which put them in a separate category.

by the SLA and there was heavy use of ‘war on terror’ rhetoric to justify the military’s actions and nullify the Western critique, a critique which was neither respected nor appreciated. Residual positive memories of previous periods may have assisted certain organisations in regaining access after the conflict was over, but during the heart of war the very status as INGO was enough to make such organisations fundamentally suspect and a threat.

MSF-H’s characterisation of the GoSL was realistic and far from naïve. The government was not a ‘gentle or benign one’, but this would not be expected of a government which had been faced with a long-term civil war. The GoSL had been ‘willing to undertake harsh actions of questionable legality in pursuit of their military agenda’, and had tried, often quite successfully, to manoeuvre the international community away from criticism of its conduct. As part of this strategy the government had tried hard to show that it respected IHL, human right law, and was attending to the needs of its population. As such the government had been ‘meticulous’ in at least appearing to follow the internationally respected norms of conduct in times of civil conflict. Part of this process was to allow the ICRC access as already described.<sup>45</sup>

MSF-H also desired to remain correct in its behaviour. Communicating about the humanitarian conditions within the Vanni was discussed but the idea was discounted as the organisation had no presence and thus no operational credibility upon which to witness and communicate. Additionally, the ICRC was present and was communicating about the conditions they saw. The issue was not as much that information was not getting out about what was happening, rather that no subsequent positive actions were seen to be taken by the GoSL, at least in the view of most international observers. Another voice was therefore not needed and in the organisation’s view it would not have assisted in MSF-H’s fight for access or aided the situation of the conflict-affected population. Repeatedly in MSF-H documentation it was stated that the objective of communicating was to improve the conditions faced by the population, not to make MSF-H feel better for having spoken out.

From September 2008 until January 2009, then, MSF-H, along with many other organisations, waited on the side lines, silent, expecting the worst but unable to respond in any meaningful way to those caught-up in the fighting in the Vanni. MSF-H anticipated the time it could assist the displaced flowing out of the Vanni. The eventual movement of displaced through the Omanthai check-point from the beginning of 2009, many of which were referred to the MSF-H supported Vavuniya

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<sup>45</sup> HAD, ‘Context Analysis and Strategic Direction’.

hospital, was thought to be a vindication of the decision not to communicate more strongly.<sup>46</sup> Access to the Menik Farm internment camp (set up late 2008 for the displaced from the fighting) was not forthcoming until February and then only to provide supplementary feeding—all other types of interventions were barred. But it was not that the organisation was inactive before this time. Public silence in external communications about the expulsion did not mean that there were no behind-the-scenes advocacy activities. In the November to December 2008 period a number of advocacy meetings were held in Colombo concerning access issues and other meetings were being planned for Geneva.

One of the aims of these meetings was to get as close as possible to government officials who had the authority to discuss access issues and negotiate space within which to work. As part of this process a meeting was held with the Minister of Disaster Management and Human Rights. Besides making its case for access, a request was made by MSF for his assistance with contacting Gotabaya Rajapaksa, the Defence Secretary (and the president's brother). It was understood that Gotabaya was not interested in MSF involvement. MSF had been able to meet with Basil Rajapaksa, special advisor to the president (and another of the president's brothers), but access decisions were up to Gotabaya. The Ministry of Health was also met with in order to discuss potential health activities but in addition to ask for help with the negotiations with the MoD. This assistance was not forthcoming. The MoD controlled all access and MSF's official and technical line ministry, the MoH, was in no position to counter decisions made by the MoD. A meeting was eventually held with Gotabaya but he clearly stated that 'the MoD will *not* allow MSF (or any other NGO) into the Vanni' [emphasis in the original]. The explanation for this policy was that it would be too complicated for the MoD to deal with more than one organisation working in the Vanni, and, crucially, that the MoD had to consider the bad reputation NGOs had in Sri Lanka.

Many embassies and donors were also visited during the advocacy rounds. Some embassies worried that pressing the GoSL too hard would push them more firmly into the Chinese, or even the Iranian, camps. There was a general fear that Sri Lanka would be 'lost' to the West. Sri Lanka's relationship with China had in fact changed in the Rajapaksa era. In the 2004-05 period the 'political, economic and military relations with China deepened substantially'.<sup>47</sup> Until the Rajapaksa period when

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<sup>46</sup> MSF-H GD, 'Chrono'.

<sup>47</sup> Thomas Wheeler, 'China and Conflict-affected States: Between Principle and Pragmatism', Sri Lanka. (London: Saferworld, 2012), p. 34.

relations began to change China hadn't had much strategic interest in Sri Lanka, but then Sri Lanka increasingly took on a more important position related to China's trade and energy routes.<sup>48</sup>

This geo-political change also affected how the prosecution of the war was perceived internationally, allowing the GoSL to change how it managed the conflict. During the ending period of the war 'Sri Lanka had 'new friends' who...allowed it to ignore the demands of its 'old friends''.<sup>49</sup> On this view traditional aid donors and diplomatic friends became less important than the China connection, one where aid was not tied to human rights approaches. China had always had a policy of non-interference which had been appreciated by the GoSL as well as by other recipients of Chinese aid.<sup>50</sup>

Against this background, in this period Russia, China, and India were blocking UN Security Council resolutions critical of the behaviour of the GoSL.<sup>51</sup> This added to the concern on the part of the diplomatic community that the international community's reaction to the events would facilitate a shift in regional alliances if not handled carefully. Regardless of these sensitivities, some embassies were supporting local human rights organisations secretly. MSF-H requested and accepted the support of Western embassies, including the US embassy, in arranging important GoSL meetings.

The ICRC, arguably the most important and influential humanitarian international actor in Sri Lanka at this time (as in 2006), was also met with by MSF concerning access issues. The ICRC, though, warned MSF that they were not actively lobbying for other organisations to have access, presumably as such advocacy may have endangered their own access. The ICRC still had five expats in the Vanni. Meetings with UNOCHA were also not productive, as the UN gave preference to diplomatic methods to push for access and would consider public communications only as a last resort, as a press statement at that time was thought to be counterproductive and would put the little access the UN had at risk.

Thus, by December 2008 access looked dire. No agency wanted to speak out publicly. There was a lack of journalists and INGOs on the ground and so little concrete information was available. For MSF it was stated again that public communications had to be for a good reason and not to make the organisation feel better. But there was concern that silence would be equated to condoning the

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<sup>48</sup> Wheeler, 'China', p. 39.

<sup>49</sup> Wheeler, 'China', pp. 52-53.

<sup>50</sup> Ibid

<sup>51</sup> Weiss, *Cage*, pp. 139-40. This support would continue. On 25 May 2009 a UN Human Rights Commission special session on Sri Lanka, requested by 17 mostly European countries, was preparing to condemn the GoSL for civilian deaths at end of the war but the motion was voted down; a GoSL resolution commending itself was passed, supported by China, India, Russia, Pakistan, Egypt, and Cuba (KM de Silva, *Defeat*, p. 198).

situation. What was being said by not saying anything? If no one spoke out would this be read to mean that the situation wasn't too bad?

As mentioned, by February access was gained by MSF-H to the Menik Farm displaced camp when the organisation was asked by the MoH to implement a supplementary feeding programme, but was not allowed to provide medical services.<sup>52</sup> Although MSF-H had been barred from the Vanni, it was from this time able to respond to very basic needs of the displaced who were referred to the Vavuniya hospital and also to the Menik Farm camp once established. MSF-H in fact made positive comments about how the government set up the camp. 'Medical services were started up, water and sanitation provided, most if not all had shelter. In effect, it was impressive—not many governments would have managed so much in such a short space in time'. And concerning medical aid, the MoH was 'very sensitive to the suggestion that they were not themselves providing significant services to the displaced. Which, in all fairness, they did—against the odds and with significant competence and dedication'.<sup>53</sup> This introduces a MSF-H commentary on the behaviour of the government which will be explored below. It was concluded in one MSF-H analysis that 'there are indications that the government is essentially complying with its obligations under international law, and is largely succeeding in meeting the main needs and/or allowing external actors to do so as needed', whilst of course understanding the poor conditions the population faced.<sup>54</sup>

But what did the new situation of both treating war wounded and being in a displaced camp mean for communicating about what the organisation was witnessing? The crux of the matter concerned the moral space left to the organisation for speaking out. For if, as it is commonly viewed, a government has the primary responsibility for providing assistance to its population, and if in the case of the Sri Lankan government of this period it was accomplishing this, then MSF-H was 'on a weak footing in criticizing them, no matter how desirable it may be to increase international presence in the camps'.<sup>55</sup> Even concerning the conflict-affected displaced the agency thought it necessary to remain, if not silent, then at least highly sensitive to the GoSL's reluctance for communications about the conditions of the displaced.

During the beginning of 2009 there were many stories in the international press, and many statements made by international organisations, about the poor conditions in the camps. In MSF-H's view each

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<sup>52</sup> Supplementary feeding programmes provide additional nourishment to children who are moderately malnourished; as such they are not considered life-saving medical interventions.

<sup>53</sup> MSF-H GD, 'Chrono'.

<sup>54</sup> HAD, 'Context Analysis and Strategic Direction'.

<sup>55</sup> HAD, 'Context Analysis and Strategic Direction'.

actor had its own agenda and many wanted to make the situation out to be worse than it was. MSF-H in fact did not see the conditions to be as bad as they were often described, though it had also expected conditions to be poor. This made the organisation uncertain about its analysis. Was it missing something? There was a discussion internally about whether MSF-H should counter the dominant narrative—in a descriptive, not an analytical, way. It did not do so in the end, based on the fact that the organisation did not feel it had enough information, was anyway uncertain about its analysis, and it not being the role of the organisation to do so. But as there was heavy criticism of the conditions in the camps internationally MSF-H's 'position' needed to be discussed. Interestingly, even within MSF-H, internal discussions about how the organisation should deal with the camps may have been influenced by the 'concentration camp' rhetoric of the time.<sup>56</sup> As with norms sets, internal coherence should not be assumed within organisations. Whilst the conditions (after the initial phase) in the camps were not so bad, it was imagined by some in the organisation that the conditions were very bad and that MSF-H had a moral duty to speak out about it. Such divergence of opinion created at times tense confrontations within the MSF movement and sections.

By March 2009 the humanitarian situation in the north and with the displaced was worsening. Only at the end of April did MSF-H gain access to the Omanthai checkpoint, and only for first aid and triage. Conditions were chaotic and catastrophic as waves of newly 'rescued' civilians were filtered through the checkpoint. Though many patients could be referred, organisational frustration at the situation boiled over. By May MSF was talking about 'state humanitarianism':<sup>57</sup> 'The government's intransigence has led to an emergency response from aid agencies with practically no toe hold in health care, distribution, water, treating the wounded or protection'. The camps were labelled 'open-air prisons'. Though there had been much international concern about the brutality of the conflict, little had been accomplished on ground. MSF was realistic if not bitter: The state was firmly controlling the situation, there was little access, voices were muzzled, and communications would get organisations kicked-out. NGOs had missed the time of being relevant as the state humanitarian system had taken over at the crucial crisis period. As the analysis concluded, struggles with administrative processes, meetings, negotiations, compromises—nothing had gotten MSF proper access. The state was firmly in control and the humanitarian response had been high-jacked by the state.

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<sup>56</sup> See, for example: Boyle, *The Tamil Genocide*.

<sup>57</sup> MSF-International General Secretary, 'Sri Lanka or State Humanitarianism', International Office of MSF, Geneva, May 2009.



In a retrospective MSF analysis it was admitted that tactical errors may have been made in the 2008-09 period, but it was stressed that humanitarian space had been in very short supply in Sri Lanka whatever the organisation had or had not done, or could have done.<sup>58</sup> In MSF-H's view the GoSL had had a plan for ending the war and it had been determined to follow through with it regardless of the criticism directed against it. Aid actors were allowed to participate in its implementation under strict conditions and had to forget about the principle of independent humanitarian action and unhindered access. The margin to negotiate was extremely thin. And as mentioned above concerning MSF-H's view on its relationship with authoritarian regimes, in Sri Lanka MSF felt that it had not adequately understood the context. MSF-H's history did not in the end help it with access, partly due to it having a poor network.

This brings the discussion to the question of the confidentiality clause. What happens when the government completes the securitisation process and attempts to take away even the voices of organisations?

#### 4.2. The Confidentiality Clause<sup>59</sup>

In April and May 2009 MSF-H faced another dilemma, that of the demand by the GoSL that renewed or new Memoranda of Understanding (MoUs) would require the signing of confidentiality clauses which were meant to severely limit the ability of international NGOs to publically communicate. This theme has already been reviewed from the government's perspective. This section analyses MSF-H's reaction to the requirement. Three aspects of the internal confidentiality clause debate will be discussed: The role of negotiation, internally and externally; the dilemma as an identity issue; and the implications concerning changes in organisational practice if such a clause were to be signed.

As with any government demand or request MSF-H first had to decide whether it would comply or not. If yes, then the question would turn to how it would negotiate its compliance with the government. Interestingly, in this case the internal decision step was itself a difficult process of internal negotiation as the issue impacted directly on the organisation's witnessing role. As such the question was very sensitive and the debate became quite heated within the organisation. To some the confidentiality clause was not a banning of communications but simply a requirement of consultation before communications were made. This was one reading of the clause which it will be remembered ended with the phrase: 'All information regarding the construction or service provision shall be

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<sup>58</sup> HAD, 'Line in Sand'.

<sup>59</sup> This section is based on HAD, 'Line in Sand', and interviews with MSF-Holland senior managers.

provided to the MoH and no public comments shall be made by the partner, *without the concurrence of the Secretary, Ministry of Health* [italics added]. To others, however, it was clear that the intent was to gag organisations regardless of the logic of the wording. Regardless of the reading of the clause, would the clause really be binding? Would it not, in fact, be possible to ignore it if the urge to speak out became overwhelming? Some felt that it was facile to state that the clause could be ignored if needed. Wouldn't breaking such a commitment undermine 'the organization's credibility as a reliable negotiation partner'? Some argued that 'such MoUs do not really change the reality on the ground, and that the clause does not make speaking out more risky than it already is', but such views were questioned by others in the organisation. And if signing was a 'voluntary act', and if there were in fact dire consequences, it would be hard then to then complain about being gagged if the gag was put into one's mouth willingly.

In the end MSF-H decided to sign the MoU in May, as MSF-F had in April. In the final analysis it was considered that the price was not too high to pay to maintain a presence. The organisation would try to stay within the parameters as set down by the MoU. If a situation arose where the need to speak out was compelling then there would always be the possibility to ignore the MoU and risk being expelled. Interestingly, in a real sense there was no room for negotiation with the government on this question. On the part of the GoSL in order for there to be a negotiation there had to be something to negotiate for, but in fact there was nothing the GoSL wanted from INGOs which was worth backing down from its plan to devoice INGOs. They could potentially be useful if they stayed, but only if they kept quiet. At that point in time there were more pressing issues for the GoSL to be concerned about than the fall-out from organisations *choosing* not to stay by not agreeing to a clause in a MoU, a clause the government felt it could adequately explain and justify. Some within MSF, though, argued that there was something for the GoSL to negotiate, as they would not have asked for such a clause if they were not afraid of INGOs' voices. On this view the government was in fact negotiating access rather than giving organisations a choice to leave. In this analysis MSF-H then had more leverage than it realised and should have refused to sign. This viewpoint, though held by very senior managers, did not win out against the operational imperative to sign with the assurance that the organisation could then stay and hope to save lives.

Following from the above for both sides the issue was framed as an identity question. For the GoSL it clearly was a justifiable requirement put into place by a sovereign state, as it had the right and, in its view, responsibility to control the activities of external agents as has been reviewed in detail. For MSF-H the question was how to deal with the identity aspects of the issue.

The confidentiality clause issue was considered in the end to be a ‘fundamental’ one for MSF and much more than only a ‘piece of paper’ as some had argued. Signing such a clause could be termed an ‘explicit surrender of a large chunk of MSF’s social mission’, its social mission being both parts of its dual mandate of medical action and advocacy. Reminiscent of the ‘building coffins for the dead’ discussions from 2006, the fear was that MSF-H would become little more than a ‘medical service provider’ without its social mission remaining intact, that is, inclusive of the witnessing and speaking out role. As with any organisation MSF-H was jealous of its self-identity and guarded against any actions which would endanger the sanctity of its identity as an emergency medical humanitarian organisation which spoke out about what it witnessed through its medical programming and proximity to the populations to which it provided aid.

One of the biggest issues considered in the MSF discussions of the MoU concerned the implications for the future of signing such a clause. Did signing indicate a change in practice for the organisation? And would there be any knock-on effects? One prominent interpretation of the confidentiality clause was that it ‘formalized and legalized’ the ability of governments to silence the external, and gave ‘legal and legitimate grounds’ to punish organisations for breaking what amounted to a contract. MSF asked itself a number of questions. Importantly, it had to be decided whether such a clause should ever be in an MoU or not—didn’t its inclusion over-step the intent of a cooperative agreement? And outside the question of whether an MoU should include such a clause, was it appropriate to make such a consultative process a matter of course, in that specific context and potentially in general? Being careful to not communicate on sensitive issues did encourage reflection on thresholds and compromises made, but were such communications adequate to represent the situation as it was? And what about the danger of complicity? What would this mean in the longer-term? Would this become a standard procedure globally, and not only about the MoU itself but about the way in which MSF-H had quieted itself since September 2008? The Sri Lankan experience may have simply been a reflection of the hard truth that governments were increasingly restricting independent humanitarian space. But should the organisation have made it an easy process? What lessons would other states learn from this? None of these questions, of course, had clear answers, and the organisation continued to struggle with them.

Analytical time has been spent reviewing the issues of speaking out in a period of extremely limited operational space. But there was also a question of relevancy. What would the organisation have done if access had been possible? What would a relevant role for the organisation have been?

#### 4.3. Relevancy

Throughout the conflict MSF had not replaced the Ministry of Health, as is the case in many resource poor and conflict riven contexts where MSF in effect takes over medical service delivery from the MoH. Instead in the Sri Lanka situation MSF had filled gaps in service delivery created by the conflict. The MoH was professional and capable of providing assistance, but through most of the conflict, particularly up until the 2002 ceasefire, it had had limited access and capacity in the LTTE controlled areas. With the opening up after the 2002 ceasefire agreement the situation had changed and more access became available to government agents. In such a context where there were less gaps to be filled, inclusive of the movement of longer-term development agencies into the former conflict areas, MSF-H was able to pull out from Sri Lanka. But with the renewal of the conflict in 2006 gaps had increased and MSF-H had decided to reengage with the context. So what of the 2008-2009 period—how could the humanitarian medical context be characterised? Strictly from a medical programming perspective relevancy was seen in the hospital when war wounded were being referred from the ICRC-led evacuations early in 2009 and at the checkpoint during in-flow of displaced at the very end of the conflict. Relevancy was questionable, though, in the camps, as programming was limited to supplementary feeding and no other medical activities were approved. For the most part the MoH provided reasonable services so it was a question of the lack of gaps. In the aftermath of the conflict after May the debates about relevancy continued and the organisation's medical impact increased and decreased in waves over time, as did MSF-H's advocacy role.<sup>60</sup>

Relevancy, therefore, was also not a clear-cut question for even an emergency medical organisation. Most issues surrounding access, communications, advocacy, and presence, were complex and difficult to work through and manage. How the organisation did so was constantly debated internally. In the end parameters had to be set within which to make decisions and act. These boundaries though were not universally respected.

#### 4.4. Boundaries

The general feelings in MSF-H concerning the 2008-09 events was one of much discomfort about the perceived easy acceptance of the expulsion and the confidentiality clause. Many saw an unfortunate lack of outrage surrounding these events and MSF's inability to access the conflict-affected population and to speak out. For some the 'silent acceptance' of the expulsion from the Vanni in September 2008 was the hardest compromise. For others the modest communications in the

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<sup>60</sup> HAD, 'Context Analysis and Strategic Direction'.

April and May 2009 period were most difficult to support. For many decisions were more nuanced than a ‘speak out and get kicked out’ or ‘don’t speak out and stay’ choice as it was characterised by some. It was a fine balance and the consensus view was that it was debatable whether the organisation had gotten it right. The organisation had reached ‘the very boundaries of the action-driven, pragmatic approach that drives MSF’s interventions (principles to guide and enable, not to unduly hinder operations)’.<sup>61</sup> The response to reaching these boundaries, though, was uncertain.

No one believed that speaking out would have improved the situation for the Tamils, and this was a good reason for not doing it. But some questioned how far the compromises went. In a certain sense what was said was more important than how often it was said. And disturbingly to some, what was said had not been extensive, and had been limited to descriptions of MSF’s medical activities and the condition of the patients. The MSF-F suspension from Niger and MSF-F/MSF-H expulsion Sudan may have influenced the organisation’s approach.<sup>62</sup> But there was a question of the balance between sensitivity to a government’s fears and the urge to speak out in the longer-term. Many in the organisation were concerned about the effects of this balance if it went too far in the government’s direction, particularly on the organisation’s credibility as a principled humanitarian actor. If principles were to be constantly ‘de-prioritized for short-term goals’, when a more principled approach was required, then the imbalance would be of major concern. To help respond to these concerns the organisation considered some key recommendations from lessons learned evaluations, including an urgent need to better understand the contexts the organisation worked in, especially in order to be able to identify ‘red lines’ of public communications—when to, and when not to, communicate in relation to the potential effects on access. It was also admitted that the organisation’s contacts with government officials in such contexts needed to be improved—both in terms of number of contacts and the depth of relationships. And finally, the organisation needed to grasp better the role its ‘public voice’ had in negotiations. The organisation, in summary, acknowledged that it needed to understand better both its, and the relevant government’s, boundaries.

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<sup>61</sup> HAD, ‘Line in Sand’.

<sup>62</sup> MSF-F’s work in Niger was suspended for a few months in 2008 because of arguments with the Ministry of Health over nutrition guidelines. MSF-H and MSF-F were expelled from the Sudan in 2003 because of the government’s displeasure over MSF communications involving the prevalence of rape in Darfur. This topic will be revisited in the conclusion.

## **V. Framing the Successes and Failures**

It should be stressed that the ‘outlawing’ of humanitarian international actors was not total and unmitigated. Unlike *homo sacer*, such actors could not be killed without penalty, and humanitarian international agencies were not permanently exiled into the wilderness. But the outlawing of the affected agencies’ mandates and voices was complete, at least as far as the actual conflict zone was concerned. They were able to remain in the country as being potentially useful in the future, but in relation to the conflict were outlawed as actors, to the point where their very voice was muted. This state of affairs was easier to organise and at less cost than to expel agencies from the country. When physical access was undesirable the security card could be used to dislocate agencies, and when their voices became a liability those too could be silenced through administrative means. This type of outlawing did not arise anew in the intense contextual changes and challenges of the end of the war period, but was built on a securitisation process already long in progress, as seen in the review of the 2006 iteration. But by May 2009 the securitisation process was complete and INGOs had been stripped to bare life, physically and morally denuded, and de-voiced.

The rationale for these acts on the part of the GoSL in 2008-09, as understood by those affected and based on a reading of government discourse, was that the GoSL was fearful that the international community would interfere with the prosecution of the war as there was little support for it in the eyes and minds of international, mostly Western, actors. But this begs the question why the GoSL and the (Western) international community were not in agreement on the way the conflict should be handled. Why was there such tension between the sides, or, more fundamentally, why were there sides at all? The aim here is not to answer these questions in a broad sense but specific to the ostracising and gagging of INGOs.

The war had lasted for many years—2009 was the twenty-sixth year of conflict. The Tigers were a brutal, totalitarian outfit which had relied on terrorism, the killing of rivals, and the assassination of political leaders, foreign and domestic, to achieve its goal of Tamil Eelam. The Sri Lankan security services and the paramilitary groups it had supported had also been the perpetrators of brutal acts. The Tamil population had been trapped in between the warring parties, and had been trapped in the conflict zone, long before hundreds of thousands were trapped on the eastern beaches. It was seemingly to everyone’s benefit to end the war (notwithstanding the question of what a peace would look like). Where did the communication breakdown occur? MSF talked about not understanding the context sufficiently. What wasn’t understood?

The discussion can be centred around the idea of a misunderstanding of drives and a disconnect between perspectives.<sup>63</sup> In this conceptualisation it can be argued that the GoSL's motivations were primarily based on three themes. The first related to a desire to counter LTTE terrorism and the LTTE as a terrorist non-state actor, a decidedly national security oriented agenda. The second, a more politically oriented objective, related to being committed to a unified state, which meant a state dominated by the majority, Sinhalese Buddhist, population; a state where the Tamil minority would be subsumed into a unified political entity. To fulfil these two aims the war had to be ended which meant the LTTE defeated and all obstacles to the formation of a unified state swept away. This informed the third theme, which was the idea that being pro-peace meant being pro-LTTE and anti-unified state. In essence, this was interpreted as threatening Sri Lankan sovereignty.

The international community, on the other hand, had a different set of drives. These were the following. First, that peace was the only way to respond to the original social and political grievances which had caused the conflict in the first place. Second, an over estimated sense of the leverage of what were perceived to be Western political and human rights ideals by the Sri Lanka elites. And therefore third, a seeming rejection of all-out war as the solution to the conflict, and indeed, a deep concern for the human rights of the civilian population who were caught in the midst of the fighting. The outcome of these contested drives was an 'increasingly rigid rejection of criticism over the state's strategy' by the GoSL.<sup>64</sup> The basic tension here was between peace and war approaches—ending the war through war or through peaceful means. To the GoSL of the time the latter view made little sense.

In the midst of this contestation of political and military visions, humanitarian agencies became linked with the agendas of Western political and human rights actors. This was not a new phenomenon, but the end of the war had brought into sharp focus the disconnect between the humanitarian imperative and national security, one result of this being that the state took over humanitarian operations to justify to a suspicious international community what it had already justified domestically, that the war would be ended and in the process the government would take all due care of the affected population. This nicely linked humanitarian operations to the national security agenda.<sup>65</sup>

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<sup>63</sup> After Harris, 'Disasters and Dilemmas'.

<sup>64</sup> Harris, 'Disasters and Dilemmas', p. 2.

<sup>65</sup> Harris, 'Disasters and Dilemmas', p. 8.

Specific to the relationship of the GoSL with INGOs, some INGOs understood the GoSL's attitude as a way to get rid of witnesses—witnesses to a knowing brutal treatment of the Tamil population, and INGOs saw the GoSL as being pro-war, anti-Tamil, anti-humanitarianism, and anti-INGO. The government was nationalist first, meaning Sinhalese, and didn't want anyone to interfere with what it was doing to the Tamils. A dominant interpretation of GoSL's actions was that INGOs were supportive of the LTTE and were against the conclusion of the war if it meant that the LTTE was defeated. Thus, humanitarian operations implemented by independent Western international NGOs was not compatible with the national security agenda, and thus, the GoSL had to take over humanitarian operations. The ICRC and the WFP though, were allowed to operate to show commitment to IHL and to help argue it was in fact a humanitarian rescue operation. To INGOs this was another proof of GoSL duplicity. It can be argued that INGOs made a moral interpretation of the situation—the 'big bad state', as authoritarian regimes were sometimes known, had stopped the good humanitarians from interfering with their war, a war which was causing suffering for civilian populations. On the other side, the GoSL made a political analysis—it was concerned with sovereignty, national security, and the designation of friends and enemies.

## **VI. Summary**

This clash of viewpoints, clearly not simply a matter of a difference of opinion, was instead founded in identity politics where friends and enemies were designated based not only on political necessity but profound tensions over self-identities. It was in fact a clash over the expression of norms. Each side had its own views but together these views in tension constructed a dysfunctional relationship. The next chapter will take forward these ideas in conjunction with the conclusions from chapters four and five, consolidating the importance of domestic considerations in the securitisation process, the tensions over the differing drives between the external and the internal, and their effects on the external working in the internal. Principles, identity, and politics have played a dominant role in the analysis thus far, surrounding and informing the discussion. The next chapter will bring the periods together and present the analysis as a coherent whole focussed on the interplay of these themes.



## **Part III**

**Changing Practices**

**and**

**The Future**

## **Chapter Seven**

### **The External in the Internal:**

#### **Changing Practices**

*History consists, for the greater part, of the miseries brought upon the world by pride, ambition, avarice, revenge, lust, sedition, hypocrisy, ungoverned zeal, and all the train of disorderly appetites, which shake the public with the same... These vices are the causes of those storms. Religion, morals, laws, prerogatives, privileges, liberties, rights of men, are the pretexts.*

Edmund Burke, *Reflections on the French Revolution*<sup>1</sup>

#### **I. Introduction**

Edmund Burke had a deep suspicion of the utopian egalitarianism espoused by the Twelve Who Ruled and argued for practical political decision-making which took into account the actual socio-political situation rather than philosophical fancies. On this view grandly stated ideology was but a pretext for policies derived from base human vices. In the opening quote Burke makes this argument clearly, juxtaposing primal vices with normative pretexts. To some this is a cynical and pessimistic view, but to others a realistic portrayal of the political process. This essential dichotomy has largely dominated political debates since Robespierre's reason was separated from his body. To a certain extent this basic dichotomy has also been the starting point for this study, for are not the tensions between states and humanitarian INGOs based on one actor espousing universal themes and the other managing practical political realities? But if so, which actor embodies which perspective?

To answer the original question derived from Burke's dichotomy this study has shown that neither actor in fact privileged one perspective over the other. The constructed relationship is more complex than a battle between pragmatic politicians and naïve do-gooders. Interestingly, the GoSL in securitising humanitarian INGOs used their ideals against them by holding them up to their own metric, finding them wanting. And though many in the international community did not respect the stance of the GoSL in the war, the perspective of the government was based on universally held constructs of sovereignty, statehood, and national security. Humanitarian INGOs on their part acknowledged the rights and duties of the GoSL but argued against its actions. And they themselves

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<sup>1</sup> Edmund Burke, *Reflections on the French Revolution* (New York: Barnes and Noble, 2010 [1790]), p. 129.

were often willing to set aside principles in order to remain relevant and present, and in the process dirtied their own hands on the political pitch.

The relationship is therefore more complicated than at first glance, and is not a black and white relationship, as seen from either side. A process of better mutual understanding *a la* Mill is then still useful, but concerning a relationship that is more complex than two sides in a straight forward negotiation. It is therefore important to try to conceptualise the relationship with more nuance. In order to do so this chapter will tie together what has been learnt from the analysis of the 2006 and 2008-2009 periods. The goal is two-fold. The first aim is to compare and contrast the two periods, teasing out both common themes and temporally unique features, and the second is to integrate these themes into the theoretical framework as presented in chapter one. Through this process a better idea will be developed about how the relationship progressed over time, and a coherent way to conceptualise and discuss this progression will be described. This discussion will begin with a summary presentation of the main themes which arose from chapters three through six. Next it will compare and contrast the two periods under study. A number of specific themes will be more fully explored, such as the causes of the tensions between the international community and the GoSL, the dichotomies discovered in the GoSL's discourse, and the various triangular relationships uncovered. Lastly, this chapter will discuss the study's findings in terms of the theoretical framework, summarising what can be learned about the work of the external in the internal.

## **II. Summary of Findings**

### **2.1. 2006: Shadow Puppets**

The analysis of the 2008-2009 period is in some ways more informative than the early period as the exposed tensions were more pronounced and therefore the positions of each actor were sharper. But agencies for the most part work in the context of the first period, where exists a more ambiguous, uncertain space for negotiation as perspectives and positions are less well-defined and progress less easily tracked. In such contexts organisations have less room to take a stand as there is less to take a stand against. As with the art of shadow puppetry, audiences see the shadows on the screen but not the colourful puppets themselves.

By late 2006 the conflict was heating-up but it was not yet a fully declared war, creating an ambiguous status of the conflict. Publically President Rajapaksa maintained his commitment to peace and spoke about the importance of upholding the ceasefire. The political elites were not monolithic, though, for at the same time parts of the strongly nationalist and aggressively anti-LTTE Colombo

political and religious class were pressuring the Rajapaksa regime to take a more militarily aggressive stand. Heavy pressure was being exerted on the regime by the JVP and JHU to respond to the sensitivities of the Buddhist Sinhalese majority.<sup>2</sup> By giving legitimacy to the LTTE and Tamil grievances, peace talks and a continued commitment to the ceasefire agreement were seen to be counter to the best interests of the Sinhalese and Buddhist community.

The context within which aid actors worked remained dominated by the aftereffects of the physical tsunami, the second ‘NGO’ tsunami, and the negative press about the slowness of the tsunami response. NGOs were seen to be corrupt, inefficient, and more concerned with their own financial well-being than the needs of the populations they were purportedly there to serve. As the war heated-up these agencies were seen to be on the side of the LTTE. These feelings were directed as much to local and foreign funded NGOs as INGOs, as well as other international aid actors such as operational UN agencies and the ICRC. The influence of domestic political discourse on the socio-political perception of NGOs was substantial. Yet INGOs—the external—were being interacted with as actors with a legitimate standing in the political arena. For without this legitimisation why would there have been a need to securitise them? If INGOs were not part of the political landscape then why pay them any heed? Yet it was still appreciated by both sides that INGOs were external agents working in the internal. This general view of the place and role of INGOs did not mean that any given INGO was safe in its place. As the political and military situation became more tense and difficult the anti-NGO feelings became stronger, a number of restrictive policies were formulated, and investigative and monitoring mechanisms implemented, such as the PSC and RADA. The killing of the ACF staff again changed the situation for INGOs attempting to work in the conflict zones and additional restrictions were put into place. The relationship would change substantially over time both because of domestic political pressures and in response to key domestic events.

The discourse used to explain and justify the increasing securitisation became ever harsher in this period, a result of these tensions between the self and other. The result of this process was the political definition of who was friend and who was enemy—and why. This discourse portrayed INGOs using

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<sup>2</sup> It should be noted that the strong political positioning of the JVP and the JHU did not last long. The JVP in 2010 agreed to support the opposition candidate Foneska as it had turned against the Rajapaksa regime for perceived abandonment of the formerly agreed upon political agenda. See: ‘Report of the Commonwealth Expert Team Sri Lanka Presidential Election’, 26 January 2010, p. 3: [http://reliefweb.int/sites/reliefweb.int/files/resources/96C7C3124913DE58852576CB0064E67B-Full\\_Report.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/96C7C3124913DE58852576CB0064E67B-Full_Report.pdf) (last accessed 18 January 2016). Also, the JVP only returned four seats in the 2010 parliamentary elections. See: <http://www.infolanka.com/news/election2010.htm> (last accessed 18 January 2016). The JHU only polled three seats in the 2010 parliamentary elections See: <http://www.aljazeera.com/news/asia/2014/11/buddhist-party-quits-sri-lanka-government-2014111894525420326.html> (last accessed 18 January 2016).

thematic dichotomies. In general the GoSL felt that international agencies did not abide by their stated humanitarian principles but rather cared more about their own well-being. In addition these Western organisations were thought not to understand the Eastern mentality. Foreigners were perceived to care more about their own people than Sri Lankans, such as when ACF suffered a security incident and more sympathy was seen to be given to that organisation rather than the suffering population. INGOs involved in the conflict zones were thought to be supportive of the LTTE and the Tamil cause to the detriment of the Sinhalese, and as such INGOs did not support the role of the government. In fact, to many the GoSL was being treated like a second-rate state. The GoSL, though, would not accept that fate, and would try to take control of its own destiny through defending itself against the most egregious practices of INGOs.

MSF-France and MSF-Spain in this period were accused of a number of offences, all of which related to their perceived support of the LTTE, accusations which these MSF sections saw as being ‘false allegations and insinuations’. The view was that the GoSL was either directly behind these negative stories or at least condoned them. This is the context within which MSF-Holland began the process to re-enter the country and re-register itself. On MSF’s view who or what constituted ‘the government’ was not well articulated, but the government was not seen to be willing to normalise MSF’s position and accept the organisation’s presence, though this would slowly change as the period progressed. Whereas the GoSL attempted to securitise INGOs, MSF attempted to desecuritise itself. MSF thought of itself as a principled humanitarian actor with a long and privileged history in Sri Lanka. In attempting to track the GoSL’s discourse an ‘Asian way’ perspective was taken by MSF-H, where it was understood that the GoSL was communicating through an indirect manner.

Given the above humanitarian access was highly constrained in late 2006. MSF-H faced many administrative challenges, such as delays in the issuance of visas, a slow registration process, and blocked MoD passes to the Vanni. It was not solely MSF which faced such constraints, though, particularly following the ACF killings. The ICRC, although having a good reputation and being considered a reliable neutral facilitator, could still be considered a threat if its actions were not appreciated by the government.

In the end of the period the situation returned to ‘normal’, that is, MSF was able to complete its registration requirements and begin work anew. Access was granted to the areas in which MSF wanted to work. It is uncertain why this change in attitude occurred. An explanation may come from the reasons the government was so ready to crack-down on INGO in the first place. The new regime was under stress, politically and militarily. There were in addition a number of international issues

to manage. Such a government was prone to react to domestic political pressure and seek to forestall increased international ‘interference’. It is plausible that the Rajapaksa regime needed a pause before letting the situation return to a more ‘normal’ state, where INGOs were allowed to work but under strict management. The 2006 period was as it turned out a trial run for another era when the regime was under even more intense pressure.

## 2.2. 2008-2009: Bare Life

In the end of 2008 – beginning of 2009 period the GoSL had to manage a complex, intersecting, set of objectives: To successfully end the war; to avert criticism by the international community concerning human rights abuses and the lack of humanitarian assistance to the civilian populations in the Vanni; and to manage the agencies already operating on its territory. These objectives, and the actions the GoSL took, built on the earlier context. The situation was more straight forward than early periods in that in the common view the end of the war was drawing near and positions had to be taken—a neutral stance was not accepted by the GoSL.<sup>3</sup> As the GoSL was the perpetrator of the war’s end there was no need for nuanced or subtle discussions, much less domestic debate—for the most part the political community was on the same line and those who were not were set aside. The Parliamentary Select Committee again added its voice on the negative attributes of NGOs but the GoSL in general made short use of discourse as actions could be taken without the need for extensive justification. In the GoSL’s view there were too many INGOs, there was no real need for them—quite the reverse, they were regarded as LTTE supporters. Thus it was too dangerous for them to remain operational and able to speak out. Government discourse related more to the international community in general and was tied up with the government’s defence of its handling of the war and its human rights record. The GoSL was increasingly dissatisfied with the perceived double standards on the part of the international human rights community in how they approached the conflict. The fact of this perceived double standard said something essential to the GoSL about the bias of the international community against the GoSL, if not their active support of the LTTE. In many ways international organisations of whichever type—humanitarian or human rights organisations, were lumped together as threats. The message to the GoSL was that it had to protect itself against these threats by taking a strong, and proactive, stand.

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<sup>3</sup> Through a review of the press at the time and interviews with MSF-H managers and others knowledgeable about Sri Lanka of this period, there seems to be a consensus that by January 2009 and the fall of Kilinochchi, it was widely believed that the end of the war and the final defeat of the LTTE was at hand and even inevitable.

The period between September 2008 and May 2009 saw realised a state of unmitigated securitisation of INGOs working in the conflict zone, as they were increasingly side-lined as relevant and legitimate actors and their voices quieted. Humanitarian NGOs were expelled from the Vanni in September 2008 and in April-May 2009 international NGOs, including MSF-H and MSF-F, were required to sign confidentiality clauses in order to remain in the country. These clauses stipulated that all external communications had to be vetted by the relevant line ministry. It was a period of existential crisis for MSF-H which prided itself on its adherence to humanitarian principles and its dual mandate of medical action and witnessing. In order to fulfil its international legal obligations the government allowed a certain level of access to the ICRC and the WFP. As such the GoSL could be more straight forward in rejection of other actors. Securitising physical presence, securitising voice—like *homo sacer* it was an outlawing of such actors. Yet this was not a total outlawing, for agencies were allowed to stay on the periphery until needed again, and so were able to remain in the shadows, but in relation to the conflict were side-lined as legitimate actors. These actions were carefully linked with the GoSL's overriding national security agenda, which was to defeat the LTTE and bring the war to a close whilst simultaneously fending off the increasing international criticism. In this period there were no specific accusations against MSF—specific INGOs were not the issue but INGOs in general, and the discourse was much more directed at the international community rather than operational INGOs within the country.

To MSF-H from a medical programming perspective relevancy was seen in the hospital when war wounded were being referred from the ICRC evacuation early in 2009, and at the checkpoint during in-flow of displaced at the very end of the conflict. Relevancy was questionable, though, in the camps, as programming was limited to supplementary feeding and no other medical activities were approved by the government. For the most part the MoH provided reasonable services, as even MSF-H acknowledged, so there were in fact a lack of gaps to fill.

MSF-H admitted to tactical errors in this last period, but humanitarian space was extremely limited in Sri Lanka at this time whatever mistakes the organisation had or had not made. Aid actors were allowed to participate in the implementation of the government's plan under strict conditions and would not be allowed the space for independent humanitarian action and unhindered access. As part of its national security agenda the state had taken on full responsibility for humanitarian assistance and was not prepared to let INGOs function. MSF-H also reflected that it had not adequately understood the context and its history did not assist it with negotiating access, partly due to it having a poor network. In fact, if anything its history of being perceived to be on the side of Tamils did not win it support with the Rajapaksa regime. Within the organisation there was a general feeling of

displeasure about the acceptance of both the expulsion and the confidentiality clause, and the paucity of communications concerning these two issues. Was there a danger of complicity? What would this mean for the organisation in the longer-term? Would this become a standard procedure globally? These questions will be revisited in the concluding chapter.

One important focus of this study has been to understand the variables which go into a government's decision-making concerning the presence and actions of humanitarian INGOs. The presence of the external therefore creates a number of problems for a government to which it must respond. In situations where there is not a coincidence of objectives which would allow for a constructive relationship, and the presence of a humanitarian INGO is undesirable, one of the ways in which a government can respond is by securitisation. Once an agent has been determined to be a threat discourse is used to paint a negative picture of the agent in order to justify taking action to remove, or at least control, the threat. The end point of this process is to completely remove the threat—to outlaw the objectionable agent. Within a construct where a state, as represented by a government, believes it has the right and a duty—the prerogative, to make the political decision on who is friend and enemy, especially in a state of exception such as civil conflict where normal rules have been set aside, the securitisation process is a logical choice to manage the threat of external agents desiring to work on its territory. In this process it should be noted the necessity to justify actions, as there are limits to a government's prerogative (except in the case of a truly totalitarian regime), in that a government cannot act in complete isolation but must gain the support for its actions by its own population and, in certain circumstances, by external actors as well. Without this support the implementation of policies will encounter unnecessary friction and may even fail if the active cooperation of the public or external actors is needed but not forthcoming. With this in mind, the next section will review the perspective of the GoSL.

### 2.3. The GoSL Perspective

What shape did the negotiation framework take in the case of Sri Lanka? This research focussed on the periods where the tensions between the Government of Sri Lanka and MSF-Holland were greatest. In examining the most problematic periods one can discover and analyse the most serious issues which interfered with a successful negotiation. What these periods had in common was the existence of an active conflict, a government under pressure—militarily and politically, internationally, and domestically. These periods also saw the involvement of external actors, both in-country and engaged from abroad. Social and religious actors were active in influencing the government's handling of the Tamil question and the conflict. The context, civil conflict, was a state



of exception where normal rules were to various extents sidestepped. The GoSL designated certain actors as enemies and others as friends. In both periods NGOs—domestic and international, were labelled enemies and the GoSL used its prerogative to make decisions about how to manage these threats. The GoSL chose to securitise the unwanted NGO actors. As the comparison between the 2006 and 2008-2009 periods has shown, the severity of the effects of this process changed over time, but the basics of the process remained the same and will be reviewed here. The structure of the securitisation process, as used in this research, should be remembered. A referent object is the entity which is being threatened. The securitising actor is the agent which is justifying its actions. And the functional actors are those which aid and abet the securitising process. But to start with it is necessary to discuss the agents which were being securitised.

The subject of the securitisation process was at times somewhat unclear. Of course fundamentally the threat to the nation-state came from the LTTE, and by extension to some in Sri Lanka from the demands of the Tamil population as a whole. The challenge was to decide on how best to respond to this existential threat. As part of this response it was necessary to decide upon which other actors were complicit and then decide on a plan of action to manage these additional threats. As has been examined in detail in chapters three through six, NGOs were associated with the threat posed by the LTTE and the conflict. NGOs were therefore not a direct threat but were seen to be either supporting, encouraging, or in some way facilitating the LTTE and thus were part of the problem which had to be dealt with. As has been seen the category ‘NGOs’ was never very clearly defined. NGOs in general were reviled, not only international organisations, but the distinction between different types of NGOs was never well articulated. A complicating factor was the influence foreign agents had on local NGOs, blurring the line between external and internal agents. For this study the focus has been on humanitarian international NGOs which desired to work in the conflict zone.

What the above indicates is that the designation of a threat—the enemy designation—was far from clear and more nuanced than designating one actor as a foe. Humanitarian INGOs were, by extension, and indirectly, seen to be threats, but only against the background of the LTTE threat. This is important for INGOs to understand, as it makes a difference whether they themselves were considered the threat or whether their connection to a problematic aspect of the context was the issue. It also should be noted the confusion over the types of NGOs involved, as this is also important for INGOs to be aware of—were NGOs as a group a threat? Or only those tainted by the external? What aspects in fact contributed to their negative perception?

The referent object was the nation-state itself, or at least the nation-state as viewed by the government and the Sinhalese political and religious elites. To these what was being threatened was both the political order and the Sinhalese Buddhist identity of the nation. Thus it was an existential threat. As has been examined in previous chapters there were a whole series of aspects which went into this threat and as described above INGOs were not the only threat to this socio-political order. The important point here is that many in Sri Lanka considered the very essence of the Sri Lankan nation-state to be at risk and this justified strong action against any who were considered enemies to the normal social, religious, ethnic, and political order.

The securitising actor was obviously the government, meaning the executive, and particularly the MoD authorities. In the two periods under study the presidential administration was led by the same set of political actors—the Rajapaksa brothers, and the president himself retained the defence ministry portfolio, to which he assigned one of his brothers to the secretary position. Other assorted governmental agents communicated policy decisions and the role of many of these have been examined. Other political actors were also involved in the securitising process but will be discussed in the next section as they should be considered as functional actors. It is vital for INGOs to understand which political actor is the securitising agent—to identify who is actually making the decisions. The sovereign is he who decides, and this is the actor who ultimately must be negotiated with.

The functional actors involved with informing the relationship between the GoSL and INGOs were socio-political actors such as the JVP and JHU. These influenced the securitisation process through such political entities as the Parliamentary Select Committee investigating the behaviour of NGOs. These functional actors were more influential in the 2006 period than the 2008-09 period as there was less divergence of opinion on how to prosecute the war in the latter period. This information is also very important for INGOs to know as those actors who influence the securitising agent may also be important to liaise with. At the least, the opinions of such actors should be monitored and the issues they consider important reflected upon in relation to the humanitarian project.

And finally, who precisely comprised the audience of the securitisation process was not always clear, but almost certainly it was partly the local Colombo political elites and partly the international community, which explains why there were so many stories in the English language press. To be effective the audience must have been the politically important segment of the population. The audience could also have been the general population in times of elections, but the Sinhalese press would have to be reviewed to confirm this. The functional actors such as the JVP and the JHU were

also not always likely to be readers of the English language press, and so for these actors also a review of the Sinhalese press would have to be made to confirm the intensity of the securitisation discourse in Sinhala. There would of course also be other media through which messages could be communicated—radio and television, meetings and other public fora, as well as *ad hoc* written artefacts such as posters, flyers, and newsletters. It should be noted that in this particular case MSF discussed who the audience was and included the general population as part of the government's target audience, though the evidence does not support this view. Regardless, it is essential for an INGO who desired to engage in a process of desecuritisation to know who the securitisation audience was, as the same audience must be targeted to properly desecuritize oneself.

This securitisation process can also be looked at from other perspectives, such as starting with the referent object, or even with the audience. This may assist in understanding the connections between the various actors, as it should in fact not be assumed that securitisation is a top-down process. The importance of functional actors speaks to this point—the symbiotic relationship between the GoSL and the JVP and JHU is a good example of how the government was influenced by other actors. The process is dynamic and is itself constructed over time, as again the changing relationship between the GoSL and the functional actors over the whole of the study timeframe points out. It is more important, then, to look at the logic of the process which takes into account the views and desires of all the relevant actors, rather than to focus exclusively on the perspective of the securitising agent itself. Understanding the underlying logic of the process, and the connections between the actors which informs this logic, will allow a securitised actor to know who to influence and what to monitor. This brings to the discussion the next question—how did MSF-Holland respond to this securitisation process?

#### 2.4. The MSF-H Perspective

In this study MSF-Holland has been used as a sort of sounding board through which to test how the GoSL reacted to the external attempting to work in the internal, but also to understand how the external responded to the decisions made by the internal. As has been stressed this relationship was constructed—the actions, perceptions, and ideologies of the two actors influenced the behaviour of the other. But as the state is the sovereign agent, international organisations will always be in a reactive state (except where a state does not exist), and therefore the primary need to interpret and theorise the behaviour of states. The task for INGOs is to first understand, and second to try to influence through negotiation, the decisions which are made by states. These tasks are performed

within a negotiation structure which, though often symbiotic in nature, has been created and dominated by the state.

Obviously the primary role of the government in granting access was acknowledged by MSF-H. The GoSL was the principle negotiation partner concerning access in the periods under study. At other periods the LTTE was also an essential negotiation partner, but often the negotiations were implicit rather than explicit, in that if access were not blocked then access was assumed to have been approved by the LTTE. This was far from the case with the GoSL, as active cooperation by the government's bureaucracy was vital. MSF-H did not, however, understand very well the concept of the state of exception. That is, the internally justified attitude a government would take towards rule breaking in times of stress. The state of exception was understood more to be arbitrary, at time illogical, behaviour, behaviour sometimes masked by an 'Asian way' of social interaction. The government's prerogative to decide was, nevertheless, explicitly understood. It was admitted, often begrudgingly, that the GoSL had a right and a duty to make decisions based on its national security concerns.<sup>4</sup> Acknowledging the GoSL's decisional prerogative was a first step, but the failure to understand the state of exception concept may have blinded the agency to an important governmental perspective. The state of exception perspective tells us that a government, in certain contexts, feels justified in laying aside normal rules and laws, all for a higher purpose. Arguments can be had whether this is to destroy the old order in preparation to create a new political and legal structure, or whether it is a way to save the old order by a temporary ridding the political system of normal constitutional constraints. It can also be debated how conscious such a decision is on the part of a government. Regardless, it is important for external actors to understand the internally coherent prioritisation of national security over rules. A positivistic view of the juridical order becomes irrelevant as contextual changes drive decision-making. A deeper relationship with the key governmental actors would have assisted MSF-H with this understanding.

The role of functional actors were in principle understood by MSF-H. In a standard context analysis model MSF-H would establish who the relevant actors were (relevant to the humanitarian context), and monitor their discourse and behaviour. The JVP and JHU were seen to be important and they appear in situation reports. But MSF-H did not have a full grasp of the various connections between the actors, such as the thread between the JVP and the PSC, and did not sufficiently grasp the meaning of the discourse such actors used which highly influenced the government. An in-depth discussion about the PSC never seems to have happened. Gaining this knowledge would have entailed a deeper

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<sup>4</sup> Based on interviews with MSF-H senior managers.

contextual understanding than MSF-H appeared to be either willing or capable to perform. The concept that other actors would influence the government's behaviour was understood, but how this actually occurred was not well understood. The organisation's poor network did not assist it in such an analysis of the context.

Related to this last point the referent object was also unclear to MSF-H. There was only a superficial understanding of the Sinhalese Buddhist nationalist perspective and its impact on political decision-making. An understanding of this perspective was vital to understanding much of the behaviour of the functional actors and the government. In fact, without this understanding the government's urge to think of the context as a state of exception was less comprehensible. As with research, *verstehen* was an important concept available to guide an agency's understanding. These approaches should also have guided the agency's search for who the audience of the government's discourse was. There was much debate about this within MSF but little consensus. Was it the elites? The average Sri Lankan? Also intriguingly the audience question was considered to be more about security concerns than the status of the organisation. The idea appeared to be that the government's discourse may have instigated a violent reaction to the agency's personnel. What was missed was the concept that organisations were being securitised and the discourse was an integral part of this process, rather than only an indication of what the government was thinking.

In general the discursive context was poorly grasped by MSF-H and the source of discourse was not always realised. This was again the case with reflecting on the influence of such actors as the JVP and PSC. Newspapers were monitored and analysed but the impact of discourse *on* the government was not well understood. The discourse monitored was more about the discourse the government used against INGOs. MSF-H's own discourse was also not well reflected upon by the organisation. One way in which this was particularly true was in the use of principles. Principles, regardless of whether they are considered to be universal or not, are often not well understood by governmental actors. Principles, though potentially as useful to states as to INGOs in creating a less politically and militarily risky, and mutually beneficial, space for humanitarian aid to be delivered, had to be correctly explained and understood by government authorities. The potential for misinterpretation was great. For example, independence could be considered to be short-hand for government avoidance, neutrality as actively not supporting military action, and impartiality as desiring to only work with Tamils. It is not clear that MSF-H properly explained these principles to the government. And in many ways principles were even side-lined by MSF in the negotiation process in both periods, as often the organisation's medical identity was given precedence over that of a principled humanitarian INGO.

Nonetheless, MSF-H did attempt to desecuritize itself. Discursive responses were made to discursive indicators which were being tracked, such as the accusations of illegality of INGOs and INGO partisanship towards the LTTE. But in a way MSF took the negative discourse by the government mostly upon itself and exaggerated its role and influence. Some senior managers believe that in the 2006 period the organisation overreacted in its response, especially in considering withdrawal and sometimes not being prepared to actually negotiate. Patience turned out to be a better tactic. What was also confused in the equation was the difference between MSF-H and other international actors. Was it understood in 2008-09 that all international actors were being conflated into a threat? MSF tended to be self-centred in this way. The Asian way desecuritisation approach recommended by MSF-H in a certain way coincided with the government's attitude, though it was more about MSF-H's ability to know what was going on rather than an appreciation of the government's anti-Western feelings. In 2006 the attempt was valid and may have done some good, but in the last period little could have been done to ameliorate the situation. The international will always lag behind the domestic and forced to react to it.

It is interesting to note that much of the above critique was shared by *post-facto* internal evaluations of MSF-H operations during the periods considered. But though some of the weaknesses correlate, such as poor networking and superficial context analysis, what is missing in the MSF-H view are the reasons for why these tactics were essential. It may be that a better understanding of why a government acts in the way it does, based on the proposed theoretical framework, will help an agency to approach access negotiations better prepared. This is not to say that MSF-H failed in the 2006-07 period to gain access—perseverance paid off and some aspects of its desecuritisation approach did work. Principles were communicated, if not to best effect, and not always when they should have been. Given that the relationship is constructed, a better mutual understanding can assist an INGO in more constructively negotiating access under normal circumstances, though as has been graphically demonstrated in some circumstances such as the end of the conflict no manner of negotiation would have gained MSF-H access.

### **III. Triangular Relationships**

Certain structures can be derived from the preceding discussions of principles, politics, and identity, and over time these structures were progressively warped until completely breaking down in the 2008-09 period. These structures are triangular in form, in that each of the three nodal points were inhabited by discrete actors who nonetheless existed in tension with the other nodes. Analysing the changing nature of these tensions, and ultimately the perversion of the very shape of the forms, is a

way of comparing and contrasting the two periods and will suggest some conclusions which were integrated into the theoretical framework. As the previous chapters have demonstrated, at the simplest level the war could be described as the military confrontation between the Sri Lankan security forces and the LTTE, though the military setting itself was far from clear-cut given the involvement of Tamil paramilitary forces on the side of the GoSL and the rebellion by Karuna against Prabhakaran in the east. But added to the military confrontation were a number of domestic and regional political issues, as well as involvement by the international community, inclusive of India and China, each of which informed the conduct of the war in their own way.

Based on this understanding the first triangle is defined by the relationship between INGOs and the two armed actors—the GoSL and the LTTE. The second triangle traces the tensions between the GoSL, INGOs and the Sinhalese Buddhist nationalist worldview as represented by the JVP and JHU. And the third triangle is delineated by the trilateral dynamic between the international community, INGOs operational in Sri Lanka, and the GoSL. As will be seen these triangles overlap and are mutually reinforcing. This section will explore how the tensions changed over time within each triangle and how the interrelationship between the triangles developed.

One of the key characteristics of the 2006 period was ambiguity concerning the future of the conflict. This ambiguity was caused by, or at least developed within, the context of serious domestic political tensions and the presence of various international actors involved with the ceasefire agreement. The position of international actors seeking to engage with the humanitarian crisis was as a result uncertain. Based on past experience it was understood that humanitarian agencies would be able to work in LTTE areas, but as there was increasing dissatisfaction with NGOs as seen through sharper discourse against NGOs as corrupt LTTE supporters, and as the MoD was becoming more controlling of access to the conflict areas, questions were raised in the minds of INGOs about future access. Yet INGOs were still being engaged with as legitimate actors who in theory could fill the space between the two actors, and organisations such as MSF-H did everything possible to widen and occupy this space. It was the existence of this space that is the defining feature that should be noted, as, even with the increasing accusations against INGOs and other international actors that they were LTTE supporters, from early 2007 to late 2008 the triangle as defined by the two armed actors and INGOs remained intact.

In the 2008-09 period, on the other hand, this space had been filled-in. The INGO node had been deleted by the GoSL so that the triangle was reconfigured into a short line connecting only the MoD to the LTTE. On the part of the GoSL there was little room for the interference of international actors

as the government instructed the MoD to see to the ending of the war. As opposed to the ambiguity of the 2006 period, in this latter period the GoSL's strategy was more straight forward and led to greater predictive power on the part of INGOs about the access trajectory, which was negative until the end of the conflict.

Beyond the military relationship between the armed actors there were socio-political aspects which influenced both the progression of the war and space available to INGOs. The 2006 period was highly influenced by the GoSL, INGO, JVP/JHU relationship. This relationship affected the space INGOs had to work within. A greater dichotomy was established which conflated military, socio-political, and religious aspects to create a polarisation which began to erode the space that INGOs had carved out. After a very rocky period agencies were able to inhabit sufficient space to work but the resistance foreshadowed future problems. By 2009 the GoSL—JVP/JHU relationship had been collapsed into a unified view on the conflict and the GoSL collapsed the triangle down to a dot, again taking the INGO node out of the equation. This is not to say that the JVP/JHU and the Rajapaksa regimes were integrated into one political unit, as to say that views of the government and the Sinhalese Buddhist nationalists merged in relation to the task at hand, which was to defeat the LTTE and unify the country under a Sinhalese Buddhist regime. Partly this was a response to the stage of the conflict and partly a reaction to international pressure.

The relationship between the international community, Sri Lanka based INGOs, and the GoSL also highly informed the space within which INGOs worked. The international community had become much more involved in 2009 than it had been in 2006. The Norwegians and the SLMM were involved and engaged in 2006, but in a more technical way, as were those agencies involved with tsunami reconstruction activities. As the war intensified the international voice became more strident. If the international engagement in 2006 had provided less attention and was based on saving the ceasefire, in 2009 there was massively more critical attention, the fact of war could not be ignored, and efforts had moved towards mitigating the damage the war was doing to the civilian population. The international community's involvement in 2006 was constructive in intent, if not in practice, but in 2008-2009 it became more adversarial. This affected the INGOs based in-country as they were again caught in the middle. If the other two triangles had been disfigured over time, this triangle was strengthened.

Why this adversarial relationship between the GoSL and the international community occurred at the end of the war is worth examining. There had of course been a series of misunderstandings between the international community and the GoSL leading up to this period, and there had been clashes over



the expression of norms. Misunderstanding as well as securitisation formed a symbiotic relationship, each side had its own views and together these views in tension constructed a dysfunctional relationship. A few words are in order to attempt to discover what lay behind this. One partial explanation is found in how the context was read by different actors, that is between an appreciation of the political and sociological context versus a positivistic view that the legal order operates in isolation. The GoSL saw that the sociological and political context helped define its response and this needed to be respected by external actors, yet most international actors did not take into consideration the local circumstances. What was important to most Western actors was adherence to international legal obligations. In fact the view was that ‘the simple legal reality [is] that norms need to be expressed or enforced in order to be realized’.<sup>5</sup> Norms were expressed by the international community, but they were never enforced, and thus never realised. The GoSL was the entity which expressed and enforced norms more effectively—the political norm of sovereignty. The juridical norm—and one which was thought of as moral in nature by agencies such as MSF-H, was not realised. The international community acted as the judiciary in the positivistic sense and the GoSL was the guardian of the constitution—the decision-maker. In a context where international actors did not understand the sociological and political context as demanded by the government, it should not be surprising that the GoSL designated friends and enemies sharply and decided that international actors were the latter. It can be wondered at how Western, especially humanitarian, actors so failed to understand the dictates of a state of exception.<sup>6</sup>

What can be summarised is that as the war intensified the three triangles changed form, collapsed, or were strengthened. INGOs were taken out from the relationship between the GoSL and the LTTE at the same time that the GoSL and the JVP/JHU nodes collapsed into one, clarifying the geometric pattern into a simpler two-sided confrontation. But concurrent with this process was an increase in the tensions between Western political actors and the GoSL, within which INGOs were again put in the middle to their detriment. The increasingly strident ‘interference’ of the international community most probably contributed to the reluctance of the GoSL to take a risk with the presence of INGOs, or even the UN. What this means in the end is that INGOs were the victims of a pincer movement between the internal and the external—caught in a nebulous world of being somehow both yet neither.

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<sup>5</sup> McCormick, *Schmitt's Critique*, p. 214.

<sup>6</sup> Needless to say these comments should not be inferred as a defence of the government's actions but simply an explanation of differing perspectives.

#### **IV. The Negotiation Structure**

At this point it will now be possible to discuss these findings in relation to the proposed theoretical framework—the negotiation structure. This discussion will only be able to take into account the findings from the Sri Lanka case study. More data from other case studies are obviously needed to improve the explanatory power of the framework. The concluding chapter will explore the further research needs concerning improving the theoretical framework and will reflect on how it may be used to interpret other similar contexts.

As will be recalled from the brief presentation of the negotiation structure in the introduction, on one side of the metaphorical table sits a government and on the other side a humanitarian international non-governmental organisation. Each represents a normative framework—a government represents what has been referred to in this study as the norm of the state and a humanitarian INGO represents the norm of humanitarianism. Norms in this sense are understood to be rules of behaviour and are socially constructed rather than dictates handed down by a superior power. The state system is fundamentally a constructed political entity. States are what they make themselves out to be and exist in dynamic tension with other states. A government, in the name of a state, must decide upon who is a friend and who is an enemy. This is an ever changing dynamic and one of the primary roles of a government is to make this calculation, concerning both domestic and international actors. This prerogative, and in fact duty, to act and to decide, is one of the defining features of sovereignty. In extreme situations, such as during civil conflict, a state of exception can be conceptualised where customary rules are laid aside and a government uses its prerogative to decide to act boldly, determinedly, and assertively, often outside the bounds of normal conduct. In a certain way this behaviour is a standard, and essential, component of the state norm. As has been seen, even a humanitarian organisation recognises a state's duty to act in periods of national emergency. Rather than the fact of action, the debate is about the actual conduct of a response and how it relates to other norms in operation at the time, such as the humanitarian norm.

The humanitarian norm is essentially a moral norm—the humanitarian act is based on a moral commitment by humans to help other humans in need. Assisting others is considered right behaviour, a response to wrong behaviour which causes suffering. This moral act is in principle divorced from the political act. Humanitarianism NGOs do not make calculations about who is friend and who is enemy in order to defend their interests. Rather, humanitarian organisations decide on who needs assistance—on who is suffering because of political acts. Humanitarian organisations are though not sovereign entities and so cannot act without the consent of the political actors who control a

population and a territory. Notwithstanding international legal frameworks which are meant to moderate the behaviour of governments, a specific government at a specific point in time will always, in practice, retain the prerogative to act decisively.

There are three ways in which this normative dichotomy should be further nuanced: The state as internal agent as opposed to an INGO as an external entity; tensions between the nature of a humanitarian actor and the context of civil war; and how principles are used by states and INGOs.

First, beyond the basic bi-polar relational construct it should be understood that the state is the internal and the INGO is the external—it is not a relationship of two actors operating on the same plane, but of one actor representing the interests of a specific political space and one actor coming from the outside and, purportedly, representing a universal norm. States routinely interact with external agents—other states, inter-governmental institutions, and international organisations, but under normal circumstances these interactions are on an international plane, that is, as one international agent interacting with another international agent. A state in this sense is an outward facing political entity interacting with other international political institutions and representatives of international civil society organisations. The issue with humanitarian INGOs attempting to work in the midst of crisis is that the plane of interaction is at the domestic level—these external agents interact *in* the internal. It is an argument of this study that that fact complicates the simplistic negotiation structure as is often presented by humanitarian INGOs.

A second way in which the negotiation structure is made more complex is by the very nature of the work humanitarian INGOs seek to perform and the space within which INGOs attempt to operate. The context that has been examined in this study is that of civil war. This is an especially sensitive context for any state, particularly when external agents try to intercede. Again, a distinction must be made between international agents which confront states on the international plane and INGOs which demand to interact with states on the domestic plane. It should be emphasised that the space that is being considered here is not only a metaphorical, or moral, or even legal space, though it is also those, but at the most essential level a physical space. This physical space is the nexus of actual humanitarian interaction between aid providers and aid receivers. For regardless of the moral implications of the humanitarian act, humanitarian aid is in essence materialistic. Without the ability to provide material aid to populations suffering from the effects of an emergency situation, where the material essentials of life are lacking and physical existence becomes precarious, the humanitarian act is null and void. But as an INGO is an external agent it is not a given that such access will be given to an internal, domestic, space, especially one as sensitive as a civil conflict.

This brings forward the third feature which provides nuance to the negotiation structure, and that is the usage of principles by both parties to negotiate the provision of aid within this moral and physical space. Humanitarian INGOs present themselves as independent and neutral agents who have the sole objective to provide aid impartially. On this view INGOs are independent of other external political actors and will not take sides in a military conflict. Additionally, aid will be provided to those in greatest need and not for any discriminatory purpose. As can be seen the three principles are tied together. A state locked into a civil conflict should be receptive to the implementation of these principles. A state will be assured that external agents will not support its enemy and that such agents will not be implementing the agenda of external political actors. And as a state has as a primary responsibility to see that its population is provided the essentials of life then there should be no argument if those of its populations suffering the most should be provided aid, especially in cases where the government cannot do so. This conceptualisation of humanitarian aid is enshrined in International Humanitarian Law and all actors concerned are obligated to facilitate the provision of aid under these conditions.<sup>7</sup> But again, regardless of the international legal obligations of a state, these are indeed external, universalistic obligations which, from a state's perspective, may not sufficiently take into consideration the domestic context. This is then again an issue of the interaction of the external in the internal. This also points to the conflict between the views of Mills and Burke.

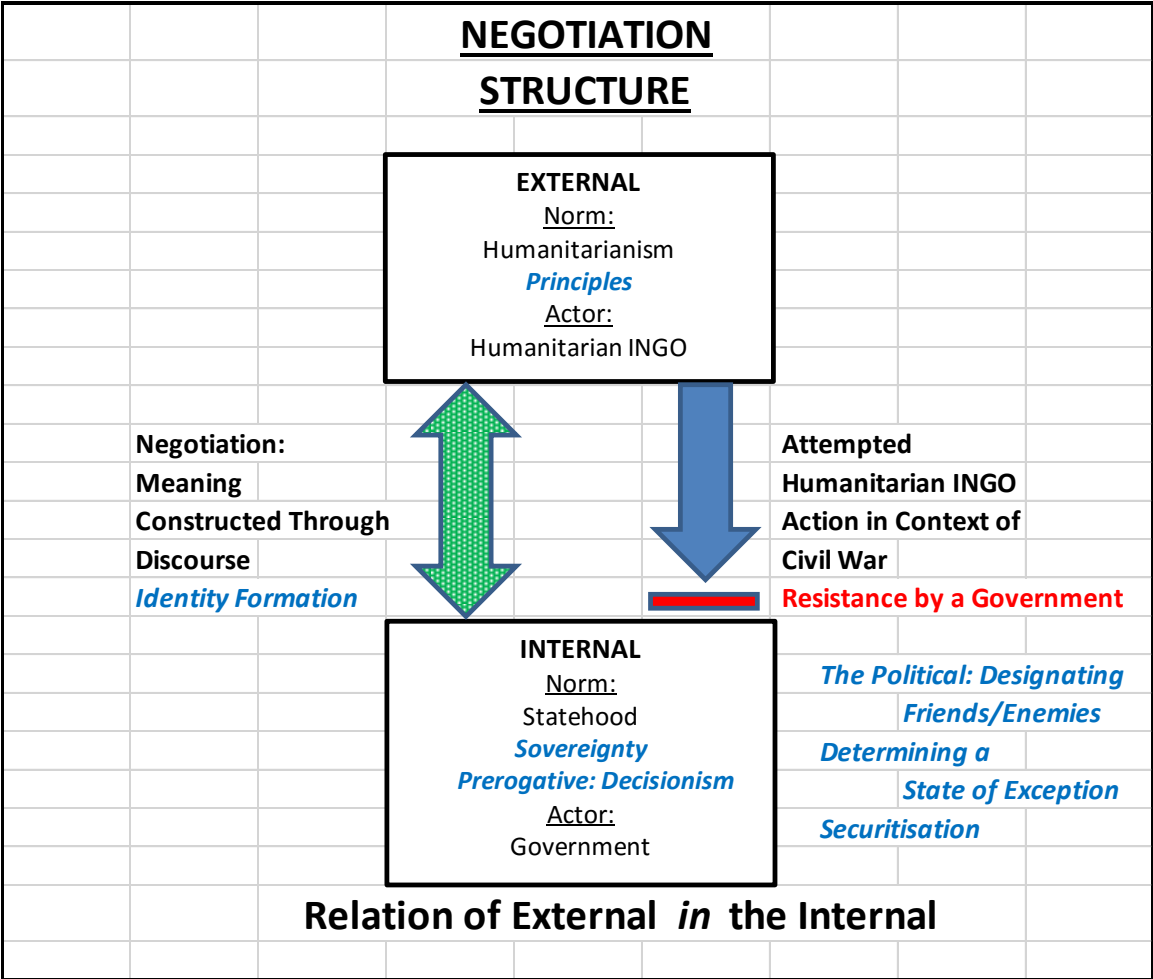
It should be stressed that the relationship between the actors is constructed. That is, the relationship is symbiotic and the negotiation is not mechanistic. The context within which the actors are negotiating informs the negotiations, and the mandate and behaviour of the actors also influences the way in which each actor reacts. Much of the tone of negotiations is dictated by perceptions. In fact, to a large extent negotiations are conducted based on perceptions. This is why the analyses of discourse is so vital, as the parties will often base their negotiation stances on what they understand to be the other's viewpoint and which they glean mostly from discourse. In this connection it should be remembered that a way of understanding the concept of the negotiation structure is as meaning constructed through discourse.

Based on the above a negotiation structure can be elaborated upon. Graphically it is presented below, followed by a description of the various components. These components related to the three critical themes of principles, politics, and identity, as review in detail above.

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<sup>7</sup> It should be noted here that this is an oversimplification of the provisions of IHL but for the purposes of this section this general view of the relationship between principles, humanitarian actors, and states responsibility should suffice.

**Fig. 3: The Negotiation Structure: The Relation of the External *in* the Internal**



Humanitarian principles should be highlighted as critical to explaining the humanitarian norm. This will be discussed more in the conclusion. Connected to the process of negotiation should be added identity formation. As has been seen the internal formation of identity and identity politics play an important role in how discourse is presented and how meaning is constructed. It should also be emphasised how identity can be constructed between actors on opposing sides of the metaphorical negotiation table. Concerning the norm of statehood two aspects should be highlighted: Sovereignty and prerogative. In the Schmittian way prerogative should be associated with decisionism—the importance of making decisions and acting rather than strictly following predetermined rules.

The described aspects under the heading ‘resistance by the government’ are of the greatest importance. Here are found the political process of designating who is friend and who is enemy, the process of determining a state of exception, and securitisation—desecuritisation, all of which have been extensively examined and described in this study.

The use of the Schmittian concepts of the political and the state of exception, and the related securitisation—desecuritisation process, has been productive in the process of better understanding how states and humanitarian INGOs interact. Previously reviewed explanations of the relationship between states and humanitarian INGOs have failed to provide a coherent framework with which to analyse and understand the relationship, or even in many ways to provide a framework at all, particularly given that the view of the states has been essentially missing in how INGOs have approached the state-INGO relationship. The analytical process proposed by this study has both uncovered much about how states approach external actors and about how external actors react to the thoughts and actions of states. As the above discussion has shown, at least in the case of MSF-Holland and the Government of Sri Lanka, there were inadequacies in how MSF-H analysed and approached the behaviour of the GoSL. If the securitisation analysis is valid, then humanitarian INGOs such as MSF must find better ways to understand the basis for state action. Also, a more nuanced understanding of the options humanitarian INGOs have in responding to being securitised would be helpful to humanitarian agencies. This study focused on the desecuritisation process but other options are available and a better understanding of their pluses and minuses is indicated. In all of this a better understanding of the role of discourse is essential.

This negotiation structure is then the basis for further research and will be increasingly made more complex as insights from further research is added. With this analysis complete it is time to turn to what next research steps should be taken and how this study's findings may already be useful. These last themes will be covered in the conclusion.

## **Conclusion**

### **The Future**

This study has elaborated upon some of the difficulties the external faces engaging with, and in, the internal. Humanitarian agencies of all types have increasingly faced challenges working with states, as explored at the beginning of this study. A ‘rise of the strong state’ thematic has developed in the humanitarian sector where it is believed that states are ‘re-exerting their sovereignty’ to the detriment of humanitarian international agencies. This has been particularly the case for humanitarian INGOs which have no formal legal mandate, though various facilitative components of IHL can be referred to in contexts of civil war. Such international agencies are thus at the mercy of the views and attitudes of states, as represented by governments, and struggle in many contexts to find a way to negotiate access with what are perceived to be recalcitrant governments. The fact of an increasingly difficult relationship between host governments and INGOs is undisputed, but the reasons for this have been less clear. Also unclear has been how these interactions actually work in practice. These questions were the starting point for this research. A case study methodology was decided upon to gain an in-depth understanding of one relationship as a first step in addressing the larger research question. It was hoped that a theoretical framework could be developed to better understand and explain such a relationship. The case study researched the relationship between the humanitarian international non-governmental organisation Médecins Sans Frontières (Holland) and the Government of Sri Lanka, comparing and contrasting the 2006 and 2008-2009 periods of that country’s civil war.

The case study found that it was useful to examine the relationship between the actors in terms of the Schmittian concepts of the political and the state of exception, both intimately tied to notions of state prerogative and sovereignty. In addition the securitisation approach was found to be a useful method to understand the way states interact with INGOs and the desecuritisation perspective to how INGOs react to state policies and discourse. Though ‘the sovereignty card’—the idea that states use sovereignty as a pretext for poor behaviour, is often used as a short-hand by INGOs to describe the rationale behind the actions by governments, a more nuanced explanation is needed. This study found that sovereignty per se was not the dominant explanatory concept. Rather, how a government views its decision-making prerogative, when and how it conceptualises a state of exception, how it designates who is a friend and who is an enemy, and how enemies are subsequently securitised, are the most pertinent concepts to consider. The role of discourse in these processes has been emphasised in this study. Taken together these concepts form the theoretical framework proposed by the study,

encapsulated in the negotiation structure elaborated upon in some detail in the last chapter. A major finding from this study is that the relationship is more complex than being a purely two-sided negotiation structure. The negotiation structure has tried to introduce the most pertinent variables to the structure. But these are only indications of the complexity. There are many other issues to be explored and which will be discussed below.

Humanitarian INGOs would benefit from referencing the negotiation structure in their approach to negotiating access, although such shifts in worldviews are not easy for large organisations to make. Understanding the securitisation process would be particularly useful for such INGOs. Paired with this is to understand better the desecuritisation option in responding to a securitised context. A firmer grounding in how discourse is used to create such a securitised environment is also essential for INGOs to be able to decide on how best to react to the policies and actions of states. In this negotiation process it would also behove governments to more fully recognize the benefits of humanitarian principles in addressing some of their own concerns. But as noted in regard to the use of principles in negotiations the onus is on the humanitarian INGOs themselves to properly communicate the usefulness of principles. Part of the basis for the devaluation of humanitarian principles by states is the chronic confusion between different types of NGOs.

Another clear finding from the case study was how chaotic the NGO field became in Sri Lanka. The GoSL seemed never to have fully appreciated the difference between national, foreign funded, and international NGOs, let alone between humanitarian, developmental, multi-mandate, and human rights NGOs. To add to the confusion, organisations such as the ICRC and operational UN agencies were often thought of as INGOs. This confusion was striking and at times the uncertainty of the targets in the discourse made even the research process difficult. Humanitarian INGOs must do a better job at communicating their specific nature and the norms upon which they operate. States must do a better job in differentiating between the various types of international actors, their specific mandates, and their limitations. Each side has much to learn about the other as Mill suggested in the introduction's opening quote. But Burke's concerns also needs to be attended to, as there are limits to how well the relationship can be repaired. Politics, principles, and identities are powerful forces which will inform how the negotiation process progresses and the relationship is constructed.

But these findings relate only to the case study of MSF-H in Sri Lanka. More globally, what is the prognosis for humanitarian INGO—state interactions and how could the proposed theoretical framework be used to analyse other, similar contexts? Some indicative examples are in order. Three other contexts within which MSF has had serious issues with its relationship with the government



are Ethiopia, Sudan, and Russia.<sup>1</sup> Very briefly some of the most pertinent issues from these contexts and how the theoretical framework could be used to better understand these environments will be reviewed below.

MSF-H's experience in Ethiopia has for many years been deeply frustrating for the organisation. The Government of Ethiopia (GoE) has traditionally had an ambiguous relationship with international actors. The common perspective of international humanitarian organisations of all types is that the GoE is unduly harsh in its relations with external actors, fiercely proud, and highly manipulative of international agencies. Ethiopia is also well known for its extensive administrative apparatus and the intensity of its bureaucratic processes. It is interesting to note, though, that at times it has been easier for agencies to negotiate access at the local level. Where negotiations at the Addis Ababa level have failed, at the local operational level discussions have sometimes been more productive. For all of the many challenges agencies have faced in Ethiopia, many do remain and are able to be operational, albeit within strict parameters and often after having had to make major compromises. Access though has been completely blocked for some organisations, as it has been for the ICRC in the Ogaden region for many years.

MSF-H has been working in the conflict-affected Ogaden region as well as many other regions for many years and has had at times an almost completely dysfunctional relationship with the authorities at all levels. MSF-H's voice has also been very carefully managed by the GoE. It has long been understood that INGOs would not be allowed to speak out about what they witness, especially concerning human rights abuses, but also about lack of development, and if they did they would be punished. As with all such contexts the question is invariably asked: Why keep them around? For Ethiopia the answer has been understood to be that humanitarian, and multi-mandate INGOs, are useful during emergencies when the government's response capacity is lacking.

In the Ethiopia case the government has been very clear in its use of its prerogative. It has also been clear about how and why states of exception have been declared. Some areas have been declared completely off-limits. Voices have been curtailed. The discursive aspects of the securitisation process though are not as clear-cut as in the Sri Lanka case, partly because there is not as an extensive (free) press as in Sri Lanka, and partly due to the differences in levels of development of the two countries. It is suspected, though, that the different natures of the regimes plays a role. In comparison to Sri Lanka Ethiopia has a more fully developed authoritarian governmental and party structure whose

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<sup>1</sup> This section is based on a review of relevant MSF-H documentation, discussions with MSF-H managers, and personal familiarity with MSF-H's experience in these contexts.

propaganda channels deeply penetrate all aspects and levels of society. Domestic political debates also play less of a role in Ethiopia as it is in practice, if not in theory, a one-party state. This does not mean that a securitisation process has not been in place in Ethiopia, only that its nature is different than in Sri Lanka.

An important question for Ethiopia, then, relates to how the discursive aspects of the securitisation process works. Who is the audience? And if the audience is not communicated with through the press does the propaganda channel replace it? Questions also arise related to how the targets of securitisation are communicated with, as it is interesting to note that it is often difficult for expat manager's to obtain appointments with senior government officials. Much of the communication is through indirect means, such as through official—diplomatic—channels. International agencies have certain ideas in mind about what the government is thinking, but it is unclear on what basis these perceptions are based. This situation also calls into calls whether humanitarian INGOs would be able to desecuritise themselves. Would the list of response options be different in such a context?

In the case of Russia the locus of intervention for humanitarian agencies has been the North Caucasus, particularly Chechnya. As opposed to a context such as Ethiopia international humanitarian interest has been narrowly focussed to one small geographical area and one set of issues. Given the sensitive nature of the conflict in the North Caucasus and the capacity of a developed country such as Russia to respond to emergencies, there has long been a question about why INGOs have been allowed to stay operational in the North Caucasus. Explanations have varied. Maybe INGOs were simply not important enough to be concerned with, they were after all well managed, and wouldn't it do more harm than good to get rid of them? INGOs have also sometimes been useful for propaganda purposes, as their presence demonstrated an openness and concern on the part of the state which fit with international obligations and norms. The most important issue for the government to attend to was to take away the voices of the remaining INGOs.

For INGOs working in the North Caucasus insecurity has been the primary operational issue. Kidnappings have been prevalent and agencies have often perceived kidnappings to be a form of retribution to punish agencies for inappropriate behaviour, particularly concerning public communications on sensitive issues. On this view it could be considered that communications between the government and humanitarian INGOs has been partly conducted through security threats and actions. But historically there has also been a clever use of discourse in the Russian press. The audience for securitisation discourse has partly been the highly literate general population and has been conducted through the Russian language. As with Ethiopia it has also been difficult for

INGO managers to obtain meetings with higher authorities. The use of governmental prerogative has been clear—it has never been in doubt that the Russian government is the decision-maker and has always shown confidence in its use of decision-making authority. Concerning Chechnya it was clearly a state of exception and the government could and would institute the rules it needed to control international (and national) agencies.

The use of security as ‘discourse’ may be an interesting angle to take in studying the Russia example. In a situation where direct contact with higher-level decision-makers was extremely rare and most of the securitisation discourse was conducted in Russian, a language most expatriate manager’s did not understand, alternative modes of communication were focussed on to monitor the government’s thinking. Security threats was one such mode. Many in the INGO world have firmly believed that this was a primary mode of communication used by the government. Should this security dynamic somehow be added to the list of response options? To literally de-‘securitise’ oneself in the sense of mitigating against actual security threats by the state?<sup>2</sup> A further examination of this theme would be intriguing.

And finally, the example of Darfur and the extremely difficult relationship between humanitarian agencies of all types and the Government of Sudan should be mentioned. For MSF-H the securitisation process worked to the greatest extent possible and MSF-H, as well as MSF-F, were expelled from the country in 2009. This was against the background of the massive humanitarian crisis on-going in the Darfur region. It has always been assumed by MSF-H that the expulsion was a result of the publication of a report on the prevalence of suspected cases of rape in Darfur. In other words, that use of the organisation’s voice was the rationale for the ultimate action a government can take against an INGO. Darfur was an extremely difficult situation for international actors as they were very tightly managed by the government. The presence of organisations could be useful from a technical standpoint, as well as from a propaganda angle, and expelling them was sensitive. But the government had limits, and speaking out was one. In the case of Darfur the Khartoum government was clearly in charge and was not afraid to use its decision-making prerogative. The Darfur conflict was a state of exception where formal rules and laws were less important than pragmatic policy making by the centre.

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<sup>2</sup> It should be noted that an argument has been made that, at least in relation to security threats to them, humanitarian organisations have, in fact, attempted to securitise insecurity itself. See: Jocelyn Vaughn, ‘The Unlikely Securitizer: Humanitarian Organizations and Securitization of Indistinctiveness’, *Security Dialogue*, 40:3 (2009).

The particular issue brought forward by the Darfur case relates to why an actual expulsion was resorted to by the government. Contrary to the belief by many in the humanitarian world expulsions of INGOs is rare. For MSF there have in fact been only a couple of examples of an MSF section being expelled from a country. As the securitisation process has more normally ended in MSF being pushed to the periphery, as happened in Sri Lanka and at times in Ethiopia and Russia, it would be interesting to question why an actual expulsion occurred in the Sudan example. As discussed in this study, the end of the war in Sri Lanka saw humanitarian agencies being stripped to a state of bare life, but they were never totally outlawed. Being outlawed obviously removes an INGO from the negotiation structure altogether. The trigger for the outlawing in the Sudan case needs further research. And, as with the other cases, the list of response options must be re-considered in such an extreme context.

These and other case studies should be studied in depth in order to see what patterns emerge. From the limited sample above governments' fear of organisations' public voice, for example, is a striking trend, as is the process of securitisation in a media poor setting. Insecurity plays a large role in many humanitarian crises and its role in securitisation should be explored in more depth. Other common themes could also be teased out. It would also be productive to compare positive with negative cases—within cases and between cases. A general question from these is whether there is a difference between types of civil conflict?

Much more research is also indicated on the role of Asian values and Asian concepts of sovereignty in informing such a relationship. In the Sri Lanka case both actors made reference to the Eastern-Western differences in world-view and ways of communicating, but this study only superficially examined this vital issue. This of course applies to the Asian region as a whole, though it is suspected that though there are commonalities each context has its own unique voice and view. There may also be other regionally specific perspectives on cultural values and sovereignty which inform how states behave towards external actors. Generalities concerning the Horn of Africa and the Former Soviet Union spring to mind. Variations in the impact of R2P and human rights norms also needs further research. In the above examples, the African approach will certainly be different than the Russian approach.

Finally, it should be noted that securitisation may not be integral to the negotiation structure. Although it is proposed that the generic negotiation structure will remain valid in any humanitarian crisis where humanitarian INGOs and states interact, securitisation as a process may not be the only way in which this relationship develops. The clash between the two norms sets does not necessarily

imply a situation of securitisation. There may be other ways in which states react to the external in the internal which does not involve the characterisation of such actors as threats which need to be managed outside the normal legal bounds. It can be envisaged, for example, a situation where a state, whilst still maintaining the right of prerogative, interacts in a less extreme way towards international actors and strictly respects normal rules, laws, and regulations related to humanitarian activities. In such a context there may still be severe tensions between the state as a political actor and a humanitarian INGO as a moral actors, but without the state villainising the external and in fact allowing it to work in the internal. These types of contexts should be searched for and researched in-depth as counter-points to the contexts reviewed above.

A few methodological recommendations should also be mentioned. A more comprehensive discourse analysis methodology is indicated which is theoretically sound and comparable but also sensitive to the particulars of any given context. Local languages should not be ignored, as for example this study limited itself to analysing only English language discourse. Any study of the Russian or Sudanese contexts would have to consider discursive practices in the local language. Regardless of the language, it may be useful also to quantify the use of specific terms, that is, to track the frequency of how different terms and concepts are used. It is of primary importance to develop a methodology for INGOs to analyse discourse better. More work is also needed on the process tracing procedure to better align it with the needs of this type of research, including more reflection on what other types of empirical evidence may be available to provide increased depth and variety to such research.

In the end the goal of this research agenda is to facilitate the work of humanitarian agencies, not for their own sakes but for the populations they were created to serve. States and humanitarian INGOs will continue to relate to one another. For the sake of the populations needing aid it is hoped that the relationship can be better constructed through mutual respect and understanding. Both Burke's cynical perspective and Mill's wish deserve attention in fulfilling this agenda.

## Timeline

### 1999-2000

The war begins to heat-up again. The LTTE is revitalised

The GoSL and the LTTE ask Norway to act as mediator

April:

- Erik Solheim is appointed Special Envoy
- The LTTE take Elephant Pass and the SLA's Lyakachchi military complex

### 2001

March: The UK proscribes the LTTE

July: The LTTE attack the international airport

December: The UNF takes control of the government, though the PA retains the presidency under Kumaratunga

### 2002

February: The ceasefire agreement is signed under facilitation of Norway. The SLMM is appointed

September: The GoSL's ban on the LTTE is lifted to facilitate talks

### 2003

April: The peace talks fail

### 2004

December: The tsunami hits Sri Lanka

### 2005

February: Agreement made between the SLFP and JVP to form a coalition government if the SLFP won the elections

April: The SLFP/JVP defeat the UNP and Rajapaksa becomes Prime Minister. The JHU wins nine seats

June: The P-TOMS draft agreement is signed. The JVP pulls out of government as a result

August:

- Assassination of Foreign Affairs Minister Lakshman Kadirgamar (a Tamil)

- Nandana Gunathilake (JVP MP) makes a motion to form a Parliamentary Select Committee to investigate NGOs
- All NGOs required to register their details and activities with the Centre for Non-governmental Sector (CNGS) under the External Resources Department of the Ministry of Finance and Planning, created in February 2005

#### September:

- Auditor General publishes a report on the use of tsunami funds which discovered irregularities, including in how aid monies were collected, distributed, and their use monitored
- Agreement made between Rajapaksa and the JVP ahead of the presidential elections. He promises the JVP to abandon P-TOMS, review the CFA, and the end any on-going discussions on power-sharing with the LTTE

#### November:

- Rajapaksa becomes president
- RADA formed, replacing P-TOMS
- Prabhakaran makes statement that the war would have re-started earlier if not for the tsunami

### **2006**

January: Parliamentary Select Committee is appointed

February: Geneva I Talks held

March: Karuna, who had in late 2005-early 2006 pulled away from the LTTE, forms the Tamil People's Liberation Tigers

#### April:

- Second round of talks in Geneva fail as the LTTE do not attend
- Attempted assassination of Lt. Gen. Fonseka
- GoSL makes arms deal with China

#### May:

- Gunathilake resigns from the PSC and Vijitha Herath (JVP MP) appointed in his place
- The EU proscribes the LTTE

#### June:

- Oslo one-day talks which fail to lead to resumption of peace talks; the sticking point is the issue of the presence of EU monitors in the SLMM
- Kebithigollewa bus incident—60 dead
- Rajapaksa becomes the head of the SLFP
- 400 complaints a month to the Disaster Relief Monitoring Unit (set up by Oxfam) about poor tsunami response, especially about slowness of housing reconstruction

#### July:

- Mid-month Fernando is appointed the new head of RADA and is immediately proactive and visible
- The LTTE kicks-out SLMM monitors from the EU
- Mavil Aru anicut incident starts
- The JVP puts increasing pressure on the government to pull out of the CFA, but Rajapaksa invites the LTTE to actively participate in peace talks
- Trincomalee LTTE spokesman says the LTTE is pulling out of the CFA
- As background it will be remembered that the Lebanon crisis—fighting between Israel and Hezbollah in southern Lebanon, was on-going during this period. This conflict was seen by many in the NAM as a contemporary example of a hegemonic ‘Western’ state oppressing a weak NAM state and people; see: [http://news.bbc.co.uk/1/hi/world/middle\\_east/5257128.stm](http://news.bbc.co.uk/1/hi/world/middle_east/5257128.stm) [last accessed 25 March 2015]

#### August:

- Fighting in Muttur, Mavil Aru, Jaffna, Trincomalee, and Sampur
- Kofi Annan calls Rajapaksa about the increasing violence
- Anti-war rallies occur but are not generally supported
- ACF massacre in Muttur
- Reports indicate that 100 Muslims are killed by the LTTE at Pachchanor
- Jan Egeland publishes op-ed mentioning insecurity in Sri Lanka and the ACF massacre
- Attempted assassination of the Pakistan High Commissioner in Colombo
- Norway gives \$1.5 million in aid for conflict-affected populations

#### September:

- NAM Summit in Havana, Cuba
- UN General Assembly debate
- LTTE pushed out of Trincomalee

#### October:

- International Press Freedom high-level visit
- SLFP and UNP sign an MoU on cooperation
- Children and Armed Conflict report to the UN Security Council. LTTE and Karuna condemned
- Geneva II talks. LTTE want the A9 road re-opened

### **2007**

The position of humanitarian INGOs becomes clearer early in the year

March-July: The LTTE loses Batticaloa and Ampara



## **2008**

The LTTE is progressively pushed farther north and east into the Vanni

January: The GoSL pulls out of the CFA

September: All international agencies expelled from the Vanni except the ICRC and the WFP

December: The Parliamentary Select Committee interim report is published

## **2009**

January: Mullaitivu taken by the SLA

April: Confidentiality clauses demanded for MoU renewals or new MoUs

May: The war ends

## Abbreviations

ACF	Action Contre la Faim
AFP	Agence France-Presse
CHA	Consortium of Humanitarian Agencies
CID	Criminal Investigation Department
CFA	Ceasefire Agreement
CNGS	Centre for Non-governmental Sector
ECHO	European Union Humanitarian Aid and Civil Protection Department
EU	European Union
GoSL	The Government of Sri Lanka
GWoT	Global War on Terror
HRW	Human Rights Watch
ICRC	The International Committee of the Red Cross
IDP	Internally Displaced Person
IGO	Inter-governmental Organisation
IHL	International Humanitarian Law
IPKF	Indian Peace Keeping Force
INGO	International Non-governmental Organisation
JHU	Jathika Hela Urumaya (National Heritage Party)
JVP	Janatha Vimukthi Peramuna (People's Liberation Front)
LLRC	Lessons Learnt and Reconciliation Commission
LTTE	Liberation Tigers of Tamil Eelam
MDM	Medicos Del Mundo [Spanish section of Medecins du Monde]
MoD	Ministry of Defence
MoFA	Ministry of Foreign Affairs
MoH	Ministry of Health

MoU	Memorandum of Understanding
MSF	Medecins Sans Frontiers
MSF-H	Médecins Sans Frontières (Holland)
MSF-F	Médecins Sans Frontières (France)
MSF-E	Médecins Sans Frontières (Spain)
NAM	Non-aligned Movement
NGO	Non-governmental Organisation
NNGO	National Non-governmental Organisation
NPC	National Peace Council
NWPC	North Western Provincial Council
PA	People's Alliance
PSC	Parliamentary Select Committee on NGO Abuses
P-TOMS	Post-tsunami Operational Management Structure
RADA	Reconstruction and Development Agency
SCOPP	Secretariat for Coordinating the Peace Process
SLA	Sri Lankan Army
SLFP	Sri Lanka Freedom Party
SLMC	Sri Lanka Muslim Congress
SLMM	Sri Lanka Monitoring Mission
SOMA	Status of Mission Agreement
TAFREN	Task Force for Rebuilding the Nation
TNA	Tamil National Alliance
TRO	Tamil Relief Organisation
UN	United Nations
UNF	United National Front
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Council

UNICEF	United Nations Children’s Fund
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNP	United National Party
UPFA	United People’s Freedom Alliance
WFP	United Nations World Food Program

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- President Rajapaksa
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## **V. Newspaper articles**

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<http://www.aljazeera.com/news/asia/2014/11/buddhist-party-quits-sri-lanka-government-2014111894525420326.html>

The below listed newspapers were all reviewed for pertinent articles for the periods mid-2005 to early 2007 and mid-2008 to mid-2009. The date ranges listed below relate to periods in which articles were located. For the most part authors were not mentioned in articles, but were referenced in the footnotes when available. Titles of articles were indicated in the text only if illustrative of the point being discussed.

*AFP*, August-September 2006.

*Asian Tribune*, August-September 2006.

*Daily Mirror*, July 2005; July-October 2006.

*Daily News*, July-November 2006.

*Island*, 26 September 2005; July-October 2006; February 2007.

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**VI.     Theses**

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